CHAPTER-I

PROVISIONS RELATING TO CONDITIONS OF SERVICE

OBJECT OF THE CHAPTER

This chapter provides for the service conditions of workers. The provisions of this chapter is virtually the provisions of the former law on this subject viz., the Employment of Labour (Standing Orders) Act, 1965 which was passed to require the employers of the Shops, Industrial and Commercial establishments to give at least the minimum facilities to workers.

This chapter defines with sufficient precision the conditions of employment and makes the said conditions know to workmen and provides for enforcement of the same. It also defines the conditions of termination, retrenchment, discharge, disciplinary action, holidays, leave etc. go a long way towards minimising friction between the management and workers.

The employers are at liberty to frame their own service rules and they may not to follow the provisions of this chapter provided that the conditions are more favorable to workers than the facilities provided in the Act and the service rule is approved by the Inspector. However the approval of the Inspector is not required where the employer s the Government.

CLASSIFICATION OF WORKERS

Workers are classified in section 4 of the Bangladesh Labour Act, 2006. According to the nature and conditions of work, workers are classified as follows: (a) apprentices., (b) badlis, (c) casual, (d) temporary, (e) probationer and (f) permanent

(a) Apprentice worker : A worker shall be called an apprentice if he is employed in an establishment as a learner, and is paid an allowance during the period of his training (sub-section (2) of section 4).

The dictionary meaning of apprentice is a learner, but from the definition it is clear receiving allowance is a condition precedent for one to become an apprentice.

(b) Badli worker : worker as has been defined in sub-section (3) of section 4 is a worker 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.

(c) Casual worker: according to sub-section (4) of section 4 means a worker if his employment in an establishment is of casual nature.

Dictionary meaning of casual is not regular; occasional. Casual workers are persons who are engaged on indefinite jobs or for definite periods: *In re: Cozans and Rathereford 52 SJ 700* case it has been decided that where there was an arrangement that a man is to come regularly once a month and keep the windows clean except when the family is away and the house is accordingly shut up then held that the employment is not casual.

(d) Temporary worker : Temporary worker, according to sub-section (5) of section 4 is A 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.

From the above definition it is quite clear that the vital question for one's becoming temporary worker is the nature of the work wherein he is employed. No temporary worker can be appointed in a work of permanent nature. The High Court has held in *Managing Director Rupali Bank Ltd. Vs. First Labour Court and others (1994) 46 DLR 143 that* the term "temporary worker" has a connotation which is different from popular and dictionary meaning of the term.

(e) Probationer worker : means a worker who is provisionally employed in an establishment to fill a permanent vacancy in a post and has not completed the period of his probation (sub-section (6) of section 4)

If the employer after the probationary period is not satisfied that the workers can carry out the work satisfactorily he has a right not to employ him as a permanent worker.

(f) Permanent worker *:* The term Permanent worker is defined in sub-section (7) of section 4. According to the definition 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.

In a question when a worker is to be treated as permanent worker the High Court Division has held "Having regard to the language employed in the sub-section of the Act, a worker in order to be treated as permanent worker need not require appointment on permanent basis. It will be sufficient if he has satisfactorily completed the period of probation. *[Managing Director Rupali Bank Ltd. Vs. First Labour Court and others (1994) 46 DLR 143].*

Having regard to the language employed in the sub-section, a worker in order to be treated as permanent worker need not require appointment on permanent basis. It will be sufficient if he has satisfactorily completed the period of probation. It has been further held that mere mentioning of the fact that a job is of temporary nature or necessarily give rise to inference that work is likely to be finished within limited period. Thus, mere appointment on a temporary basis is not the sole criterion for holding the work as temporary one.

PROBATION- PURPOSE OF

According to sub-section (6) of section 4 of Bangladesh Labour Act, 2006 "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."

The purpose of probation is to judge the suitability of a person appointed on a particular post. According to sub-section (8) of section 4 of the Bangladesh Labour Act, 2006 the period of probation for a worker whose function is of clerical nature, shall be six months and for other workers such period shall three months, including breaks due to leave, illegal lock-out or strike (not being an illegal strike) in the shop or commercial or industrial establishment.

Provided that in the case of a skilled worker, the period of probation may be extended by an additional period of three moths if, for any circumstances, it has not been possible to determine the quality of his work within three months' period of his probation.

If the employer after the probationary period is not satisfied that the workers can carry out the work satisfactorily he has a right not to employ him as a permanent worker.

WHETHER A PROBATION PERIOD MAY BE COUNTED ON RE-APPOINTMENT PROBATIONER CAN BE REVERTED TO HIS FORMER POST

Sub-section (9) of section 4 of the Bangladesh Labour Act, 2006 provides that If any worker, whose service has been terminated during his probationary period, including the extended period of three months in case of a skilled worker is again appointed by the same employer within a period of three years, he shall, unless appointed on a permanent basis, be deemed to be a probationer and the period or periods of his earlier probation shall be counted for determining his total period of probation.

WHETHER A PROBATIONER CAN BE REVERTED TO HIS FORMER POST

According to sub section (10) section 4 of the Bangladesh Labour Act, 2006 'If a permanent worker is employed as a probationer in a new post, he may, at any time during the probationary period, be reverted to his old permanent post. Suppose 'A` a worker employed as machine operator. He has been employed in the higher post of Designer. During the probationary period be may be reverted to his original post of Machine Operator.

RELATIONSHIP OF MASTER AND SERVANT OR EMPLOYER AND EMPLOYEE- HOW CAN BE DETERMINED

For determining the relationship of master and servant or employer and employee recourse may be had of the following tests : (a) The Superintendence and Control Test. (b) The Multiple Test. (c) The Organisation Test.

(a) The superintendence and control test : Employer-employee relationship may be determined by the existence of the right in the employer, not merely to direct what work is to be done, but also to control the manner in which it is to be done. *In Dharangadhra Chemical Works Ltd. Vs. the State of Saurashtra, (1957 LLJ 477 SC),* it has been held that the factors of supervision and control are decisive of the legal quality of the relationship. The nature and extent of control which is requisite to establish the relationship of employer must necessarily vary with each business and is, by its very nature, incapable of precise definition. But the correct approach would be to consider having regard to the nature of the work, whether or not there is due control and supervision over the manner of execution of the work.

(b) The Multiple Test : These are four indicia of a contract of service. There are (1) the master's power of selection of his servant, (2) the payment of wages or other remuneration, (3) the master's right to control the method of doing the work, and (4) the master's right of dispensing with the services. In *Indo Pakistan Corporation Ltd. Vs. First Labour Court of East Pakistan 21 DLR 285* it has been held that that a Worker when on very solitary occasions doing the function of a Manager or an Administrative officer does not cease to be a

worker. The exceptions to the definition of the word 'worker' as given in the exception in clause (v) of section 2 clearly indicates that if a person who is mainly employed in a managerial or administrative capacity exercises functions mainly of managerial or administrative nature then and then only a worker shall be taken out of the purview of the definition of worker. In *Mujibur Rahman Sarkar Vs. Labour Court, Khulna (1981) 31 DLR 301* the High Court Division of the Supreme Court held that what is important in determining whether a person is a 'Worker' or not is to see the main nature of the Job done by him and not so much his designation. The issue as to whether a person was worker or not has to be resolved in each case with reference to the evidence on record.

(c) The Organisation Test : The organisation test looks at the integration of the employee in the organisation, and considers those sufficiently integrated as employees and those who perform subordinate or incidental work are not. Madkenna, J. in Ready Mixed Concrete v. Minister of Pensions and National Insurance, 1968 (1 Q. B. 487) preferred the multiple test to the organisation test and laid three conditions necessary for a contract of service viz. ; (1) Agreement by the employee in consideration of a wage to provide his own work and skill in the performance of some service for his master (2), subjection to control though not always a sufficient condition of a contract of service, and (3) the negative condition that the other provisions of the contract are not inconsistent with it being a contract of service. In Kirlosker Oil Engine v. Hanumant Bibave, 1963 (1 L.L.J. 126 S.C) the Indian Supreme Court observed that the decision of the question as to the relationship of employee and employee must always be determined in the light of all relevant facts and circumstances and it would not be expedient to lay down any particular test as being decisive in the matter.

PROCEDURE FOR OBTAINING LEAVE

Workers are entitled to different kinds of leave with wages such as casual leave, annual leave, festival leave, sick leave etc. But the worker is supposed to obtain permission for remaining absent on leave. The procedure for obtaining leave is defined in section 10 of the Bangladesh Labour Act, 2006 which reads as under.

Procedure for leave : (1) A worker who desires to obtain leave of absence shall apply to the employer for the same in writing stating his leave address therein.

(2) The employer or his authorised officer shall issue orders on the application within seven days of the application or two days prior to the commencement of leave applied for, whichever is earlier ;

Provided that, if, due to urgent reasons the leave applied for is to commence on the date of application or within three days thereof the order shall be given on the same day.

(3) If the leave asked for is granted, a leave pass shall be issued to the worker.

(4) If the leave asked for is refused or postponed, the fact of such refusal or postponement, and the reasons thereof shall be communicated to the worker before the date on which the leave was expected to be commenced. and shall also be recorded in a register to be maintained by the employer for the purpose.

(5) If the worker, after convincing of leave, desires an extension thereof, he shall, if such leave is due to him, apply sufficiently in advance before the expiry of the leave to the employer who shall, as far as practicable send a written reply either granting or refusing extension of leave to the worker to his leave-address.

LAY OFF

The term "Lay-off" has been defined in clause *(Lviii)* of Section 2 of the Bangladesh Labour Act, 2006. Acceding to the said definition *'lay-off'* means the failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stock or the break-down of machinery to give employment to a worker"

In the case of *Virginia Tobacco Co. Vs. Labour Court (1993) 45 DLR 233* it has been held that Lay off is a right of the employer It has further been held that it is the right of the company to stop or discontinue the industry at any time if it is satisfied that there is no prospect to continue the industry is available to the company and the workers for that matter have no say in this regard and are not entitled to seek a direction from the Labour court to open the Industry by instituting a case under section 34 of the ordinance and the Labour court has no such power to make such order and the workers are left with no remedy except that as provided in section 9 of the Act during the period they were laid off. *[Virginia Tobacco Co. Vs. Labour Court (1993) 45 DLR 233]*

Financial inability- ground for lay off : Employer's financial inability is covered by the expression "other cause beyond his control" appearing in section 6 and his right to take action thereunder cannot be fettered with limitation. *[Virginia Tobacco Co. Vs. Labour Court (1993) 45 DLR 233]"*

RIGHT OF LAID-OFF WORKERS FOR COMPENSATION

Lay off is not cessation of employment and it is done due to any contingency and inability on the part of the employer. As such the workers are entitled to certain benefits during the period of lay off.

Section 16 of the Bangladesh Labour Act, 2006 provides for such compensation. According to the section 16-

Right of laid-off workers for compensation : (1) Whenever a worker, other than a badli or casual worker, whose name is borne on the muster-rolls of an establishment and who has completed not less than one year of continuous service under the employer is laid-off, he shall be paid compensation by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene.

(2) The amount of compensation as mentioned in sub-section (1) shall be equal to half of the total of the basic wages and dearness allowance, and ad-hoc or interim pay, if any, and the full amount of housing allowance, if any, that would have been payable to him had he not been so laid-off.

(3) A badli worker whose name is borne on the muster-rolls of an establishment shall cease to be regarded as 'badli' for the purpose of this section, if he has completed one year of continuous service in the establishment.

(4) No worker shall, unless there is an agreement to the contrary between the worker and the employer, be entitled to the payment of compensation under this section for more than forty-five days during any calendar year.

(5) Notwithstanding anything contained in sub-section (4), if during a calender year a worker is laid-off for more than forty-five days, whether continuously or intermittently, and the lay-off after the expiry of the first forty-five days comprises period or periods of fifteen days or more, the worker shall, unless there is an agreement to the contrary between the worker and the employer, be paid compensation for all the days comprised in every subsequent period of lay-off for fifteen days or more.

(6) The amount of compensation as mentioned in sub-section (5) shall be equal to one-fourth of the total of the basic wages and dearness allowance, and ad-hoc or interim pay, if any, and the full amount of housing allowance, if any.

(7) In any case where, during a calender year, a worker is to be laid-off after the first forty-five days as aforesaid, for any continuous period of fifteen days or more, the employer may, instead of laying-off such a worker, retrench him under section 20."

Suppose a worker get Tk. 4000 as basic pay Tk. 800 as house rent allowance Tk. 300 as conveyance allowance Tk. 200 or Medical allowance. If he is laid of he will get Tk. 2000+Tk 200 per month. After 45 days the amount will be (Tk. 1000+Tk.800)=1800 per month

EMPLOYER'S DUTY TO MAINTAIN A MUSTER-ROLL FOR LAID-OFF WORKERS

Section 17 of the Bangladesh Labour Act, 2006 provides that Notwithstanding that the workers employed in an establishment have been laid-off, the employer shall maintain a muster-roll, and provide for the making of entries therein by or for the laid-off workers whom may present themselves for work at the establishment at the appointed time during normal working hours.

WORKERS NOT ENTITLED TO LAY-OFF COMPENSATION IN CERTAIN CASES

Workers are entitled to certain benefits during lay-off period, but in some cases they lose the rights. According to section 18 of the of the Bangladesh Labour Act, 2006-(1) Notwithstanding anything contained elsewhere in this Chapter, no compensation shall be payable to a worker who has been laid-off- (a) if he refuses to accept on the same wages, any alternative employment not requiring any special skill or previous experience, in the same establishment for which he has been laid-off, or in any other establishment belonging to the same employer and situated in the same town or village or situated within a radius of eight kilometres from the establishment ; (b) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day if so required by the employer.

(2) For the purpose of sub-section (1) (b), every laid-off worker who presents himself for work at the establishment at the time appointed for the purpose during normal working hours

on any day and is not given employment by the employer within two hours of his so presenting himself, shall be deemed to have been laid-off for that day within the meaning of this section.

(3) If a laid-of worker who presents himself for work as mentioned in sub-section (2), instead of being given employment at the commencement of any shift for any day, is asked to present himself for the purpose during the second half of the shift for the day, and if he so presents himself, he shall be deemed to have been laid-off only for one-half of that day, the other half being treated as on duty, irrespective of the fact whether he is given work or not.

RETRENCHMENT

Retrenchment is defined in clause (xi) of section 2 of the of the Bangladesh Labour Act, 2006 According to the definition Retrenchment means the termination by the employer of services of workers, not as a measure of punishment but on the ground of redundancy ;

Conditions of retrenchment : According to section 20 of the Bangladesh Labour Act, 2006 - (1) A worker employed in an establishment may be retrenched from service on the ground of redundancy.

(2) No worker who has been in continuous service for not less than one year under an employer shall be retrenched by the employer unless- (a) the worker has been given one month's notice in writing, indicating the reasons for retrenchment, or the worker has been paid in lieu of such notice, wages for the period of notice ; (b) a copy of the notice is sent to the Chief Inspector or any other officer authorised by him and also to the collective bargaining agent in the establishment, if any ; and (c) he has been paid, compensation which shall be equivalent to thirty days wages or gratuity for every completed year of service if any, whichever is higher.

(3) Notwithstanding anything contained in sub-section (2), in the case of retrenchment of a worker under section 16(7), no notice as mentioned in sub-section (2) (a) shall be necessary; but the worker so retrenched, shall be paid fifteen days wages in addition to the compensation or gratuity, as the case may be, which may be payable to him under sub-section (2) (c).

(4) Where any worker belonging to a particular category of workers is to be retrenched, the employer shall, in the absence of any agreement between him and the worker in this behalf, retrench the worker who was the last person to be employed in that category.

Retrenchment-essential conditions of : The essentials of a termination on the grounds of retrenchment under section 12 are: (a) the worker must be given one month's notice in writing indicating the reasons for retrenchment or he has been paid in lieu of such notice wages for the period of notice; (b) a copy of the notice in respect of retrenchment is sent to the Chief Inspector; and the worker has been paid at the time of retrenchment compensation or gratuity whichever is higher as required under clause (c) of section 12. *[M/S Caltex Oil (Pak) Ltd. Vs. Second Labour Court, East Pak and others (1967) 19 DLR 264]*

PROCEDURE FOR RETRENCHMENT

The procedure for retrenchment is laid down in sub-section (2) and (4) of section 20.

According sub- section (2) no worker who has been in continuous service for not less than one year under an employer shall be retrenched by the employer unless-

(a) the worker has been given one month's notice in writing, indicating the reasons for retrenchment, or the worker has been paid in lieu of such notice, wages for the period of notice ;

(b) a copy of the notice is sent to the Chief Inspector or any other officer authorised by him and also to the collective bargaining agent in the establishment, if any ; and

(c) he has been paid, compensation which shall be equivalent to thirty days wages or gratuity for every completed year of service if any, whichever is higher.

According sub- section (4) Where any worker belonging to a particular category of workers is to be retrenched, the employer shall, in the absence of any agreement between him and the worker in this behalf, retrench the worker who was the last person to be employed in that category.

RE-EMPLOYMENT OF RETRENCHED WORKERS

Section 21 of the Bangladesh Labour Act, 2006 makes provision for re-employment of retrenched worker in his former post. According to the section Where any number of workers are retrenched, and the employer proposes to take into his employ any worker within a period of one year from the date of such retrenchment, he shall give an opportunity to the retrenched workers belonging to the particular category concerned by sending a notice to their last known addresses, to offer themselves for employment, and the retrenched workers who so offer themselves for re-employment shall have preference over other retrenched workers, each having priority according to the length of his service under the employer.

DISCHARGE

Discharge as defined in clause (xvii) of section 2 of the Bangladesh Labour Act, 2006 means the termination of services of a worker by the employer for reasons of physical or mental incapacity or continued ill-health of a worker ;

Procedure for discharge is defined in section 22 of the Act. According to the section (1) A worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health certified by a registered medical practitioner.

(2) If a worker who has completed not less than one year of continuous service is so discharged, he shall be paid by the employer compensation at the rate of thirty days wages for every completed year of service, or gratuity, if any, whichever is higher.

As regards the right of the employer not to retain a disable person in service the High Court Division has held that in case of continued ill health of a worker the employer has the right to discharge a worker *[Karim Jute Mills Ltd. Vs. Chairman, Second Labour Court, Dhaka and another. 1997 BLD (AD) 208]*

Although provision is there in the Act to discharge a worker on his physical incapacity but the term "Physical incapacity" is defined nowhere in the Act. No competent authority has also been prescribed for declaring a person incapable or incapacitated or disabled. However

the High Court Division in a case held that employee even after availing 211 days leave out of 365 days of the year applied for another one month's leave on identical medical ground, it cannot be said that even then the employee should be treated by the employer as physically fit to serve the employer. *[Mohsen Jute Molls Ltd. Vs. Labour Court, Khulna (1999) 4 BLC (AD) 172]*

TERMINATION OF SERVICE

Termination means the dispensing with the services of a worker by the employer without assigning any reason whatsoever. The employer has only to pay certain compensation to permanent workers.

Section 26 of the Bangladesh Labour Act, 2006 deals with such termination of employment. The section reads as under :

"Termination of employment by employers otherwise than by dismissal, etc.: (1) The employment of a permanent worker may be terminated by the employer, otherwise, than in the manner provided else-where in this Chapter, by giving to him in writing - (a) one hundred and twenty days' notice, if he is a monthly rated worker ; (b) sixty days' notice, in case of other worker.

(2) The employment of a temporary worker may be terminated by the employer, otherwise than in the manner provided elsewhere in this Chapter, and if it is not due to the completion, cessation, abolition or discontinuance of the temporary work for which he was appointed, by giving to him in writing- (a) thirty day's notice, if he is a monthly rated worker ; (b) fourteen days notice, in case of other worker.

(3) Where an employer intends to terminate the employment of a worker without any notice, he may do so by paying to the worker, wages in lieu of the notice, which is required to be given under sub-section (1) or (2), as the case may be.

(4) Where the employment of a permanent worker is terminated under this section, he shall be paid by the employer compensation at the rate of thirty days' wages for every completed year of service or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act."

Termination is recognized method of dispensing with the Service of a worker by an employer after fulfilling certain condition such as, by providing termination benefits : The wide powers with which the Labour court is vested under section 25 (1) (d) also includes the power to order Termination with termination benefits. It has been held in a case that the employer has got every right Under section 19 of Employment of Labour (S.O.) Act to terminate the service of his employees on payment of termination benefits as admissible. *[S H Quddus and others Vs. Chairman Labour Court (1991) 33 DLR I].*

None but the Trade Union leaders are protected against the order of termination if the termination is a victimisation for his trade union activities. Workers cannot challenge the order of termination in Labour court unless the services of the worker concerned is alleged to have been terminated for his trade union activities or unless the worker concerned has been deprived of the benefits specified in that section .

TERMINATION BY WORKER (RESIGNATION)

A worker himself can terminate his services. It is called resignation A worker may terminate his own service under section 27 of the Bangladesh Labour Act, 2006. The section reads as under :

Termination of employment by workers : (1) A permanent worker may resign from his service by giving to the employer in writing sixty day's notice.

(2) A temporary worker may resign from his service by giving to the employer in writing- (a) thirty days' notice, if he is a monthly rated worker ; (b) fourteen days notice in case of other worker.

(3) Where a worker intends to resigns from his service without any notice, he may do so by paying to the employer wages in lieu of the notice which is required to be given under sub-section (1) or (2), as the case may be.

(4) Where a permanent worker resigns from his service under this section, he shall be paid by the employer 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;

or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act."

TERMINATION OF TEMPORARY WORKERS

Section 26(2) provides for termination of employment of temporary workers i.e. workers employed in temporary works. According the sub-section the employment of a temporary worker may be terminated by the employer, otherwise than in the manner provided elsewhere in this Chapter, and if it is not due to the completion, cessation, abolition or discontinuance of the temporary work for which he was appointed, by giving to him in writing- (a) thirty day's notice, if he is a monthly rated worker ; (b) fourteen days notice, in case of other worker.

Where an employer intends to terminate the employment of a worker without any notice, he may do so by paying to the worker, wages in lieu of the notice

MISCONDUCT

The word 'misconduct' is not defined in the Bangladesh Labour Act. According to *Ballentin : Law Dictionary, 1984 edn.* Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law, a forbidden act. It differs from carelessness *[Ballentin : Law Dictionary, 1984 edn]*

According to sub-section(4) section 23 of the Bangladesh Labour Act, 2006 the following acts and omissions shall be treated as misconduct-

(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.

MISCONDUCT- KINDS OF

Misconduct could be of three kinds : (1) technical misconduct which leaves no trail of indiscipline, (2) misconduct resulting in damage to the employer's property which might be compensated by forfeiture of gratuity or part thereof, and (3) serious misconduct such as acts of violence against the management or other employee or riotous or disorderly behaviour in or near the place of employment, which though not directly causing damage, is conducive to grave in indiscipline. The first should involve no forfeiture, the second may involve forfeiture of the amount equal to the loss directly suffered by the employer in consequence of the misconduct and the third will entail forfeiture of gratuity due to the workman. In other words if a workman in guilty of a serious misconduct of the third category, then his gratuity can be forfeited in its entirety.*[Tournamulla Estate Vs. Workmen (1973) 2 SCC 502]*

PUNISHMENT FOR CONVICTION AND MISCONDUCT

Section 23 of the Bangladesh Labour Act, 2006 provides for punishment : (1) Notwithstanding anything regarding lay-off, retrenchment, discharge and termination of service as provided elsewhere in this Act, a worker may be dismissed without prior notice or pay in lieu thereof if he is - (a) convicted for any criminal offence ; or (b) he is found guilty of misconduct under section 24.

(2) Any worker found guilty of misconduct may, instead of being dismissed under sub-section (1), in consideration of any extenuating circumstances, be awarded any of the following punishments, namely: (a) removal ; (b) reduction to a lower post, grade or scale of pay for a period not exceeding one year ; (c) stoppage of promotion for a period not exceeding one year ; (d) withholding of increment for a period not exceeding one year ; (e) fine ; (f) suspension without wages and subsistence allowance for a period not exceeding seven days ; (g) censure or warning.

(3) A worker who is dismissed under sub-section (1) or removed as a measure of punishment under sub-section (2)(a) shall, if his continuous service is not less than one year, be paid by

the employer compensation at the rate of fourteen days wages for every completed year of service, or gratuity, if any, whichever is higher ;

Provided that no compensation shall be payable if the worker is dismissed for misconduct in case of theft or dishonesty with the employer's property.

PROCEDURE FOR PUNISHMENT

Procedure for punishment is provided in section 24 of the Bangladesh Labour Act, 2006.

For punishing a worker an employer has to bring the charges in writing, allow him to show cause and make an enquiry on the allegation.

According to this section (1) No order of punishment under section 23 shall be made against a worker unless-

(a) the allegations against him are recorded in writing ;

(b) he is given a copy thereof and not less than seven day's time to explain ;

(c) he is given an opportunity of being heard ;

(d) he is found guilty, after enquiry ;

(e) the employer or the manager approves of such order.

(2) A worker charged for misconduct may be suspended pending enquiry into the charges against him and unless the matter is pending before any Court, the period of such suspension shall not exceed sixty days :

Provided that during the period of such suspension, a worker shall be paid by his employer a subsistence allowance equivalent to half of his average wages, and dearness allowance and ad-hoc or interim pay, if any.

(3) An order of suspension shall be in writing and shall take effect immediately on delivery to the worker.

(4) In an enquiry the accused worker may be helped by any person nominated by him who is employed in the establishment.

(5) If in an enquiry, any oral evidence is given on behalf of any party, the party against whom the evidence is given may cross examine the witness.

(6) If, on enquiry, a worker is found guilty and is punished under section 23(1), he shall not be entitled to his wages for any period of suspension but shall be entitled to the subsistence allowance for such period.

(7) If the charges against the worker is not proved in the enquiry, he shall be deemed to have been on duty for the period of suspension for enquiry, if any, and shall be entitled to his wages for such period of suspension and the subsistence allowance shall be adjusted accordingly.

(8) In cases of punishment, a copy of the order inflicting such punishment shall be supplied to the worker concerned.

(9) If a worker refuses to accept any notice, letter, charge-sheet, order or any other document addressed to him by the employer, it shall be deemed that such notice, letter, charge-sheet, order or the document has been delivered to him, if a copy of the same has been exhibited on the notice board and another copy has been sent to the address of the worker as available from the records of the employer, by registered post.

(10) In awarding punishment, the employer shall take into account the previous record of the worker concerned, the gravity of the misconduct, and any other that may exist.

Regarding enquiry in a case Indian Supreme Curt held that the departmental enquiry is not an empty formality; it is serious proceeding intended to give the employee a chance to meet the charge and to prove his innocence. In the absence of enquiry it would not be fair to strain facts against an employee and to hold that in view of the admissions the enquiry would out of place in dealing with cases of orders passed against employees terminating their service. *[Jadish Prasad Saxena Vs. State of Madhay Bharat, AIR 1961 SC 1070 = (1963) I LLJ 325]*

COMPENSATION IN CASE OF DISMISSAL

A worker who is dismissed under sub-section (1) of section 23 of the Bangladesh Labour Act, 2006 or removed as a measure of punishment under sub-section (2)(a) shall, if his continuous service is not less than one year, be paid by the employer compensation at the rate of fourteen days wages for every completed year of service, or gratuity, if any, whichever is higher ;

Provided that no compensation shall be payable if the worker is dismissed for misconduct in case of theft or dishonesty with the employer's property.

GRIEVANCE PROCEDURE

Submission of grievance notice is *a sine quanon* for filing of case against any action of the employer under chapter II of the Bangladesh Labour Act, 2006. Section 33 of the Bangladesh Labour Act lays down the procedure for submission of grievance by a worker and the duties of the employer to be done pursuant to such grievance. Section reads as follows " (1) 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 covered under this Chapter, and intends to seek redress thereof under this section, shall submit his grievance to his employer, in writing, by registered post within thirty days of being informed of the cause of such grievance.

Provided that if the employer acknowledges receipt of the grievance, in that case the service by registered post shall not be essential.

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

(3) If the employer fails to give a decision under sub-section (2) or if the worker is dissatisfied with such decision, he may make a complain in writing to the Labour Court within thirty days from the last date under sub-section (2) or within thirty days from the date of the decision, as the case may be.

(4) The Labour Court shall, on receipt of the complaint hear the parties after giving notice to them and make such orders as it my deem just and proper.

(5) The Labour Court, may amongst other relief, direct reinstatement of the complainant in service, either with or without back wages and convert the order of dismissal, removal or discharge to any other lesser punishment specified in section 23(2).

(6) Any person aggrieved by an order of the Labour Court, may, within thirty days of the order, prefer an appeal to the Tribunal, and the decision of the Tribunal on such appeal shall be final.

(7) No court-fees shall be payable for lodging complaint or appeal under this section.

(8) No complaint under this section shall amount to prosecution under this Act.

(9) Notwithstanding anything contained in this section, no complaint shall lie against an order of termination of employment of a worker under section 26, unless such order is alleged to have been made for his trade union activities or passed motivatedly or unless the worker concerned has been deprived of the benefits specified in that section.

CHAPTER-II

LAW RELATING TO TRADE UNIONS AND SETTLEMENT OF INDUSTRIAL DISPUTES

INDUSTRIAL DISPUTE

Definition : An industrial dispute as has been defined in clause (Lxii) *of* section 2 of the Bangladesh Labour Act, 2006 is as follows ***"industrial dispute*** means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person;

INGREDIENTS OF INDUSTRIAL DISPUTE

If the above definition is dissected it will be seen that in order to be an industrial dispute there must be- (i) a dispute or difference and the dispute must be (i) between employer and workmen or (ii) between employer and employer or (iii) between workmen and workmen and the dispute must be-(i) in connection with employment or non employment; or (ii) in connection with the terms of employment or the conditions of work of any person.

The word any person has not been explained here. As such it seems that in order to treat a dispute the subject matter of the dispute may be with regard to non workers even.

NATURE OF DISPUTE

Although the definition of industrial dispute is wide enough to cover all disputes between employers and employers or between employers and workmen or between workmen and workmen the mode of raising of dispute as envisaged in section 209 of the Bangladesh Labour Act, 2006 suggests that no dispute except the dispute between the employer and workmen can be treated as industrial dispute.

DISPUTE- HOW RAISED

Bangladesh Labour Act, 2006 provides complete procedure for settlement of industrial disputes. It lays down that any strike or lock out, in order to be valid and lawful, must be in accordance with its provisions. The parties cannot resort to a any action without seeking recourse to this law.

Section 209 of the Bangladesh labour Act, 2006 says that no industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a collective bargaining agent or an employer there has been prescribed no form of raising of industrial dispute.

Provisions have been made in section 210 of the Act as to the manner how an industrial dispute may be raised by an employer or a Collective bargaining agent on behalf of the workers and the negotiations may be commenced for the settlement of the issues raised between them. Negotiation, conciliation and arbitration for settlement of such issues have been prescribed in this section as compulsory preliminary steps so as to avert the taking of the

extreme measure by either of the parties in the shape of strike or lockout leading to a deadlock in the industry.

MODE OF SETTLEMENT OF INDUSTRIAL DISPUTE

The mode of settlement of Industrial dispute has been described in sections 210-213 of the Bangladesh Labour Act, 2006. Section 210 provides that-

Settlement of industrial disputes : (1) If, 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, as the case may be, the collective bargaining agent shall communicate his or its views in writing to the other party.

(2) Within fifteen days of the receipt of a communication under sub-section (1), the party receiving it shall, in consultation with the representatives of the other party, arrange a meeting for collective bargaining on the issue raised in the communication with a view to reaching an agreement thereon, and such meeting may be held with the representatives of the parties authorised in this behalf.

(3) 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.

(4) If— (a) the party receiving a communication under sub-section (1) fails to arrange a meeting with the representatives of the other party for collective bargaining within the time specified in sub-section (2), the other party, or (b) 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 mentioned in sub-section (2) or clause (b) of this sub-section, as the case may be, report the matter to the Conciliator and request him in writing to conciliate in the dispute and the Conciliator shall, within ten days of receipt of such request, proceed to conciliate in the dispute.

(5) The Government shall, for the purposes of this Chapter, by notification in the Official Gazette, appoint such number of persons as it considers necessary, as Conciliator for such specific area or any industrial establishment or industry, and the Conciliator shall take up the conciliation to whom the request shall be made for conciliation under sub-section (4),

(6) The Conciliator, upon receipt of the request as aforesaid, shall star conciliation and shall call a meeting of the parties to the dispute for the purpose of bringing about a settlement.

(7) The parties to the dispute shall appear before the Conciliator in person or shall be represented before him by person nominated by them and authorised to negotiate and enter into an agreement binding on the parties.

(8) If any settlement of the dispute is arrived at in the course of the proceedings before him, the Conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute.

(9) If no settlement is arrived at within the period of thirty days of receipt of request under sub-section (4) by the Conciliator, the Conciliation proceedings shall fail or the conciliation may be continued for such further period as may be agreed upon in writing by the parties.

(18) The Director of Labour may, if he deems fit in the interest of settlement of a dispute, at any time, take over any conciliation proceedings pending before any Conciliator and proceed to conciliate in the dispute himself or transfer such proceedings to any other Conciliator, and the provisions of the preceding subsections shall apply to such proceedings.

When the efforts for conciliation go in vain a duty is cast upon the conciliator to try for arbitration in order to avoid strike or lock-out. Sub section (10) to (17) provides as follows :

(10) If the conciliation proceeding fails, the Conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator.

(11) If the parties do not agree to refer the dispute to an Arbitrator, the Conciliator shall, within three days of failure of the conciliation proceedings, issue a certificate to the parties to the dispute to the effect that such proceedings have failed.

(12) If the parties agree to refer the dispute to an arbitrator, they shall make a joint request in writing for reference of the dispute to an arbitrator agreed upon by them.

(13) The arbitrator, to whom a dispute is referred under sub-section (12), may be a person borne on a panel to be maintained by the Government or any other person agreed upon by the parties.

(14) The Arbitrator shall 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.

(15) After he has made an award, the arbitrator shall forward a copy thereof to the parties and to the Government.

(16) The award of the arbitrator shall be final and no appeal shall lie against it.

(17) An award shall be valid for a period not exceeding two years as may be fixed by the arbitrator.

STRIKE AND LOCK-OUT

Section 211 of the Bangladesh Labour Act, 2006 provides that *(1)* If no settlement is arrived at during the course of conciliation proceedings and the parties to the dispute do not agree to refer it to an Arbitrator, the workmen may go on strike or, as the case may be, the employer may declare a lock-out, on the expiry of the period of the notice prescribed by sub-section (1) of section 211. The section reads as under :

Strike and lock-out : *It is provided in section 211-* (1) The party which raised the dispute may, within fifteen days of the issue to it a certificate of failure under section 210(11), either give to the other party a notice of strike or lockout, a the case may be, to commence on a day, not earlier than seven days and not later than fourteen days of the date of such notice, to be specified therein, or make an application to the Labour Court for adjudication of the dispute :

Provided that no collective bargaining agent shall serve any notice of strike unless three-fourths of its members have given their consent to it through a secret ballot specially held for he purpose, under the supervision of the Conciliator, in such manner as may be prescribed.

(2) If a strike or lock-out is commenced, either of the parties to the dispute may make an application to the Labour Court for adjudication of the dispute.

(3) 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 :

Provided that the Government may, by order in writing, prohibit a 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.

(4) In the case of any of the public utility services, the Government may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out.

(5) In any case in which the Government prohibits a strike or lock-out, it shall forthwith refer the dispute to the Labour Court.

(6) The Labour Court shall, after giving both the parties to the dispute an opportunity of being heard, make such award as it deems fit as expeditiously as possible but not exceeding sixty days from the date on which the dispute was referred to it:

Provided that the Labour Court may also make an interim award on any matter or dispute:

Provided further that any delay by the Labour Court in making an award shall not affect the validity of any award made by it.

(7) An award of the labour Court shall be for such period as may be specified in the award which shall not be more than two years.

(8) No strike shall 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. But other provisions of this Chapter relating to resolving industrial dispute shall apply to such establishments.

STRIKE OR LOCK-OUT IN PUBLIC UTILITY SERVICES

Some services specified in clause (xii) of section 2 of the Bangladesh Labour Act, 2006 have been declared as *public utility services.* According to it *'public utility service'* means-

(a) the generation, production, manufacture, or supply of electricity, gas, oil or water to the public,

(b) any system of public conservancy or sanitation,

(c) hospitals and ambulance service,

(d) fire-fighting service,

(e) postal, telegraph or telephone service,

(f) railways, airways, road and river transport,

(g) ports,

(h) watch and ward staff and security services maintained in any establishment,

(i) oxygen acetylene, and

(j) banking ;

The Bangladesh Labour Act, 2006 has not snatched away the rights of strike or lock out of persons engaged in public utility services, but in order to minimise the sufferings of the people at large has put some restrictions on it.

Sub-sections (4)-6 of section 211of the Bangladesh Labour Act, 2006 provides as follows :

(4) In the case of any of the public utility services, the Government may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out.

(5) In any case in which the Government prohibits a strike or lock-out, it shall forthwith refer the dispute to the Labour Court.

(6) The Labour Court shall, after giving both the parties to the dispute an opportunity of being heard, make such award as it deems fit as expeditiously as possible but not exceeding sixty days from the date on which the dispute was referred to it:

CONCILIATOR

The word Conciliator has not been defined elaborately in the Bangladesh Labour Act, 2006. According to the definition in clause (Lxiii) of section 2 *'conciliator'* means a person appointed as such under Chapter XIV ;

A conciliator is appointed under sub-section (5) of section 210 of the bangladesh Labour Act, 2006. It reads as under

(5) The Government shall, for the purposes of this Chapter, by notification in the Official Gazette, appoint such number of persons as it considers necessary, as Conciliator for such specific area or any industrial establishment or industry, and the Conciliator shall take up the conciliation to whom the request shall be made for conciliation under sub-section (4), "

The duties and functions of the Conciliator is defined in sub-sections (6) to (11). These are as follows :

(1) The Conciliator, upon receipt of the request as aforesaid, shall star conciliation and shall call a meeting of the parties to the dispute for the purpose of bringing about a settlement. *(Sub-Sec: 6)*

(2) The parties to the dispute shall appear before the Conciliator in person or shall be represented before him by person nominated by them and authorised to negotiate and enter into an agreement binding on the parties. *(Sub-Sec: 7)*

(3) If any settlement of the dispute is arrived at in the course of the proceedings before him, the Conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute. *(Sub-Sec: 8)*

(4) If no settlement is arrived at within the period of thirty days of receipt of request under sub-section (4) by the Conciliator, the Conciliation proceedings shall fail or the conciliation may be continued for such further period as may be agreed upon in writing by the parties. *(Sub-Sec: 9)*

(5) If the conciliation proceeding fails, the Conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator. *(Sub-Sec: 10)*

(6) If the parties do not agree to refer the dispute to an Arbitrator, the Conciliator shall, within three days of failure of the conciliation proceedings, issue a certificate to the parties to the dispute to the effect that such proceedings have failed. *(Sub-Sec: 11)*

As regards duties of a conciliator it has been held in an Indian decision (A I R 1964 Mad 538) that a Conciliators paramount duty is to arrange exchange of views of the employer and the workers and to find out a way for settlement of the dispute.

UNFAIR LABOUR PRACTICE

Unfair Labour practice is of two types - (i) Unfair Labour Practice on the part of the employer and (ii) Unfair Labour Practice on the part of workers.

Employers' unfair Labour practice is defined in section 195 of the Bangladesh Labour Act, 2006 According to the section -

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 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 ;

(e) induce any person to refrain from becoming, or to 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 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.

Unfair Labour practices on the part of workmen is defined in section 196 of the Bangladesh Labour Act, 2006- According to this

(1) No worker shall engage himself in any trade union activities during his office hours without the permission of his employer :

Provided that nothing in this sub-section shall apply to the trade union activities of the President or the General Secretary of a trade union which is the collective bargaining agent for the establishment, if such activities relate to the participation in any committee, negotiation, conciliation, arbitration or proceedings under this Act, and the employer has been duly informed of such activities.

(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 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 by the exercise of undue influence, intimidation, impersonation or bribery through its executive or through any other person acting on its behalf.

REGISTRATION OF TRADE UNION

According to section 2 (xv) of the Bangladesh Labour Act, 2006 *'trade union'* means trade union of workers or employers formed and registered under Chapter XIII of this Act and shall include a federation of trade unions

The mode of formation and registration of trade unions is defined in sections 177-179 of the Act. According to section 182 The Director of Labour, on being satisfied that the trade union has complied with all the requirements of this Act shall register the trade union in a prescribed register and issue a registration certificate in the prescribed form within a period of sixty days from the date of receipt of the application.

A trade union shall apply for registration under section 177. The requirements for application is provided in section 179 and requirement for registration is provided in section 179. The sections are as follows :

Application for registration : Any trade union may, under the signature of its president and secretary, apply for registration of the trade union to the Trade Unions of the concerned area under this Chapter *(Section 177).*

Requirements for application : It is provided in section 178 as follows *:* (1) An application for registration of a trade union shall be made to the Director of Labour or to the Officer authorised in this behalf

(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 ; (vi) in case of a federation of trade unions, the names, addresses and registration numbers of member-unions ;

(b) three copies of the constitution of the trade union together with a copy of the resolution by the members of the trade union adopting such constitution bearing the signature of the Chairman of the meeting ;

(c) a copy of the resolution by the members of the trade union authorising its President and Secretary to apply for its registration ; and

(d) in case of a federation of trade unions a copy of the resolution from each of the constituent unions agreeing to become a member of the federation.

(3) The Director of Labour or the officer authorised in this behalf shall, or receipt of an application under sub-section (1), forthwith send a copy thereof along with the list of officers of the union to the employer concerned for information.

Provided that in case where the applicant is a federation of trade unions, a public notice showing the names of the officers of the union shall be published at the expenses of the applicant.

Requirements for registration : According to section *179*- (1) A trade union shall not be entitled to registration under this Chapter unless the constitution thereof provides for the following matters, namely:

(a) the name and address of the trade union ;

(b) the objects 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 applies in the form set out in the constitution declaring that he 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 member of the trade union and of adequate facilities for the inspection thereof by the officers and members of the trade union ;

(g) the manner in which the constitution shall be amended, varied or rescinded ;

(h) the safe custody of the funds of trade union, its annual, audit, the manner of audit and adequate facilities for inspection of the books of account by the officers and members of trade union ;

(i) the manner in which the trade union may be dissolved ;

(j) the manner of election of officers by the general body of the trade union and the term, not less than two years and not exceeding three years, for which an officer may hold office;

(k) 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;

(l) the procedure for expressing want of confidence in any officer of the trade union ; and

(m) 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.

(2) A trade union of workers shall not be entitled to registration under this Chapter unless it has a minimum membership of thirty percent of the total number of workers employed in the establishment in which it is formed :

Provided that more than one establishments under the same employer, which are allied to and connected with the another for the purpose of carrying out the same industry irrespective of their place of situation, shall be deemed to be one establishment for the purpose of this sub-section.

(3) Where any doubt or dispute arises as to whether any two or more establishments are under the same employer or whether they are allied to or connected with one another for the purpose of carrying on the same industry the matter may be referred to the Director of Labour for decision.

(4) Any person aggrieved by a decision of the Director of Labour under sub-section (3) may, within thirty days of the decision, prefer an appeal to the Labour Court ; and the decision of the Labour Court shall be final.

(5) Not more than three trade unions shall be registered in any establishment.

CANCELLATION OF REGISTRATION OF TRADE UNION

An unregistered trade union is not entitled to function according to law. i.e if a trade union is not registered with the Registrar of Trade Unions it cannot conduct any trade union activities. In case the registration of a trade union is cancelled it attains the status of an unregistered trade union and it cannot continue as a trade union.

The registration of a trade union may be cancelled on any of the following grounds as enumerated in section 190 of the Bangladesh Labour Act, 2008 after obtaining permission from the labour Court. which reads as under:

The ground on which registration of a trade union may be cancelled is enumerated in section 190 of the Bangladesh Labour Act, 2006 as follows : (1) Subject to the other provisions of this section, the registration of a trade union may be cancelled by the Director of Labour if the trade union has- (a) applied 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.

(2) Where the Director of Labour is satisfied on enquiry that the registration of a trade union should be cancelled, he shall submit an application to the Labour Court praying for permission to cancel such registration.

(3) The Director of Labour shall cancel the registration of a trade union within thirty days from the date of receipt of a permission from the Labour Court.

(4) The registration of a trade union shall not be cancelled on the ground mentioned in sub-section (1) (e) if the unfair labour practice is not committed within three months prior to the date of submission of the application to the Labour Court.

REMEDY OF TRADE UNION IN CASE OF CANCELLATION OF REGISTRATION

In case the registration of a trade union is cancelled under section 190 of the Bangladesh Labour Act, 2006 the trade union concerned whose registration has been so cancelled may

prefer an Appeal against such cancellation to the Labour Appellate Tribunal under section 191 of the Act. The section is as follows :

APPEAL AGAINST PERMISSION FOR CANCELLATION

Section191 of the Bangladesh Labour Code, 2006 provides for appeal to the Labour Appellate Tribunal against permission for cancellation as well as order of cancellation of registration of a trade union. The sections reeds as under:

(1) Any person, aggrieved by an order of the Labour Court granting the prayer for permission to cancel registration of a trade union or rejecting such prayer under section 190 or by an order of cancellation of the registration of a trade union made by the Director of Labour under that section may, within thirty days from the date of the order, appeal to the Tribunal and the decision of the Tribunal thereon shall be final.

(2) Where an appeal is filed under sub-section (1), the trade union shall be permitted to function as such till the disposal of the appeal.

COLLECTIVE BARGAINING AGENT- DETERMINATION OF

A collective bargaining agent as has been defined in (Lii) of section 2 of the Bangladesh Labour Act, 2006 **'collective bargaining agent',** in relation to an establishment or group of establishments, means the trade union of workers or federation of trade unions which, under Chapter XIII, is the agent of the workers in the establishment, or group of establishments in the matter of collective bargaining ;

According to sub section (1) of section 202 Where there is only one trade union in an establishment, that trade union shall, be deemed to be collective bargaining agent for such establishment. But if there exists in an establishment more than two registered trade unions all of them cannot raise industrial dispute or negotiate with the employer. One of these trade unions which is declared collective bargaining for a particular period can represent the workers.

MODE OF DETERMINATION OF COLLECTIVE BARGAINING AGENT

Section 202 of the Bangladesh Labour Act, 2006 provides for the procedure for determination of collective bargaining agent.

Sub section (2) -(21)-of the Act provides for the procedure for election and determination of collective bargaining agent. These read as under

(2) 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.

(3) 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.

(4) If a trade union fails to indicate, within the time specified in the notice, its desire to be a contestant in the secret ballot, it shall be presumed that it shall not be a contestant in such ballot.

(5) If no trade union indicates, within the time specified in the notice, its desire to be a contestant in the secret ballot, the trade union which has made the application shall be declared to be the collective bargaining agent in relation to the establishment concerned, provided it has as its members not less than one-third of the total number of workers employed in the establishment.

(6) Every employer shall on being so required by the Director of Labour, submit to him a list of all workers employed in the establishment for not less than a period of three months in the establishment excluding those who are casual or *badli* workers, and the list shall contain the following particulars; namely : (i) Name of each worker, (ii) Name of his parents, (in appropriate case name of husband/wife shall be written), (iii) Name of his section or department, (iv) place in which he is employed, (v) his ticket number and the date of his employment

(7) On being so required Director of Labour, every employer shall submit to the Director of Labour requisite number of additional copies of the list of workers mentioned in sub-section (6) and shall provide such facilities for verification of the list submitted by him .

(8) On receipt of the list of workers from the employer, the Director of Labour shall send a copy of the list to each of the contesting trade unions and shall also affix a coy thereof in a conspicuous part of his office and another copy of the list in a conspicuous part of the establishment concerned, together with a notice inviting objections, if any, to be submitted to him within such time as may be specified by him.

(9) The objections, if any, received by the Director of Labour within the specified time shall be disposed of by him after necessary enquiry.

(10)The Director of Labour shall make such amendments, alterations or modifications in the list of workers submitted by the employer as may be required by any decision given by him on objections under sub-section (9).

(11) After amendments, alterations or modifications, if any, made under sub-section (10), or where no objections are received by the Director of Labour within the specified time, the Director of Labour shall prepare a list of workers employed in the establishment concerned duly certified and send copies thereof to the employer and such of the contesting trade unions at least seven days prior to the date fixed for the poll.

(12) The list of workers prepared and certified under sub-section (11) shall be deemed to be the list of voters, and every worker whose name appears in that list shall be entitled to vote in the poll to determine the collective bargaining agent.

(13) Every employer shall provide all such facilities in his establishment as may be required by the Director of Labour for the conduct of the poll but shall not interfere with, or in any way influence the voting.

(14) No person shall canvas for vote within a radius of forty-five meters of the polling stations.

(15) For the purpose of holding secret ballot to determine the collective bargaining agent, the Director of Labour shall-

(a) fix the date for the poll and intimate the same to each of the contesting trade unions and also to every employer ;

(b) on the date fixed for the poll to place in the polling station set up for the purpose the ballot boxes which shall be sealed in the presence of the representatives of the contesting trade unions as to receive the ballot papers.

(c) conduct the poll at the polling stations at which the representatives of the contesting trade unions shall have the right to be present ;

(d) after the conclusion of the poll and in the presence of such of the representatives of the contesting trade unions as may be present, open the ballot boxes and count the votes ; and

(e) after the conclusion of the count, declare the trade union which has received the highest number of votes to be the collective bargaining agent:

Provided that no trade union shall be declared to be the collective bargaining agent for an establishment unless the number of votes received by it is not less than one third of the total number of workers employed in such establishment.

(16) Where a registered trade union has been declared under sub-section (14) (e) to be the collective bargaining agent for an establishment, it shall be such collective bargaining agent for a period of two years and no application for the determination of the collective bargaining agent for such establishment shall be entertained within a period of two years from the date of such declaration :Provided that, in the case of a group of establishments, the trade union declared to be the collective bargaining agent therefor shall be such collective bargaining agent for three years.

(17) Notwithstanding anything contained in sub-section (16), where a registered trade union desires to be the collective bargaining agent for an establishment after the expiry of the terms of an existing collective bargaining agent or where an existing collective bargaining agent desires to continue as such for the next term, it may make an application to the Director of Labour, not earlier than one hundred and fifty days and not later than one hundred and twenty days immediately before the expiry of the term of the existing collective bargaining agent, to hold a secret ballot to determine the next collective bargaining agent for the establishment.

(18) Where an application under sub-section (17) is made, a secret ballot to determine the next collective bargaining agent shall be held within one hundred and twenty days from the receipt of such application, but the trade union declared to be the next collective bargaining agent shall be the collective bargaining agent from the date of the expiry of the term of the existing collective bargaining agent.

(19) Where after an application made under sub-section (17) a collective bargaining agent has not been determined for reasons beyond the control of the Director of Labour before the

expiry of the term of the existing collective bargaining agent, the existing collective bargaining agent shall continue to function as such till a new collective bargaining agent is determined.

(20) Where no application is made under sub-section (17), the Director of Labour may, after the expiry of the term of the existing collective bargaining agent, recognise such collective bargaining agent or any registered trade union to act as collective bargaining agent for the establishment unless a registered trade union is deemed to be a collective bargaining agent for the establishment under sub-section (1) or until a collective bargaining agent is determined by secret ballot under the foregoing provisions of this section, as the case may be.

(21) Any dispute arising out of any matter in relation to an election for determination of collective bargaining agent shall be referred to the Labour Court, and the decision of the Labour Court thereon shall be final.

RIGHTS AND OBLIGATIONS OF A COLLECTIVE BARGAINING AGENT

A collective bargaining agent as has been defined in clause (Lii) of section 2 of the Bangladesh Labour Act, 2006, in relation to an establishment or industry, means the trade union of workmen which, under chapter XIII, is the agent of the workmen in the establishment or, as the case may be, industry in the matter of collective bargaining;

The rights and obligations of a collective bargaining agent is defined in sub sections (*23*) and (24) of Section 202 of the Bangladesh Labour Act, 2006. According to sub-section (23)-

A collective bargaining agent may, without prejudice to its own position, implead as a party to any proceedings under this Chapter to which it is itself a party any federation of trade unions of which it is a member.

According to sub-section (24) the collective bargaining agent in relation to an establishment or group of establishments shall be entitled to-

(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 in accordance with the provisions of this Chapter ; and

(d) nominate representatives of workers on the board of trustees of any welfare institutions or Provident Funds, and of the Workers participation Fund established under Chapter XV,

(e) To conduct cases on behalf of any individual worker or group of workers.

A collective bargaining agent is a registered trade union. Besides the above rights it enjoys other rights of a registered trade union an enjoined in sections 197-199 of the Bangladesh Labour Act, 2006. According to section 197 no officer or member of a registered trade union or a collective bargaining agent as a determined by the Director of Labour shall be liable to punishment under section 120B(2) of the Penal Code, 1860 in respect of any agreement made

between the members thereof for the purpose of furthering any such object of the trade union as is specified in its constitution referred to in section 179

According to section 198- a collective bargaining agent is immune to any suit or legal proceedings in respect of any action done in contemplation or furtherance of an industrial dispute or in respect of any tortious act done in contemplation or furtherance of an industrial dispute.

According to section 199 notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a trade union shall not be void, or violable by reason only that any of the objects of the agreement are in restraint of trade ;

RIGHT AND PRIVILEGES OF REGISTERED TRADE UNIONS AND COLLECTIVE BARGAINING AGENTS

Registered trade unions enjoy some privileges as enumerated under section 197-199 of the Bangladesh Labour Act, 2006. The law envisages that the law of conspiracy is limited in application in respect of a registered trade union and they are immune from certain civil cases. The agreements between trade unions and employers are enforceable even these are in restraint of trade.

According to section 197 of the Bangladesh Labour Act, 2006 no officer or member of a registered trade union or a collective bargaining agent as a determined by the Director of Labour shall be liable to punishment under section 120B(2) of the Penal Code, 1860 in respect of any agreement made between the members thereof for the purpose of furthering any such object of the trade union as is specified in its constitution referred to in section 179

According to section 198 of the Bangladesh Labour Act a collective bargaining agent is immune to any suit or legal proceedings in respect of any action done in contemplation or furtherance of an industrial dispute or in respect of any tortious act done in contemplation or furtherance of an industrial dispute.

In respect of civil court's jurisdiction it has been held by the High Court in *the case of Karnafully Paper Mills Sramik Union Vs. Registrar Trade Union* reported in *42 DLR 329* that when a trade union seeks to enforce its right to contest election for Collective Bargaining Agent and the facts do not bring the case within the definition of industrial dispute to confer jurisdiction on Labour Court, Civil Procedure Code will apply and the Civil Court will have jurisdiction. It has further been held that if there is no remedy for the grievance of the plaintiff in the Industrial Relations Ordinance then the Civil Court will have jurisdiction to try the matter.

According to section 199 notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a trade union shall not be void, or violable by reason only that any of the objects of the agreement are in restraint of trade.

LABOUR COURT

Industrial justice is administered through Labour Courts. Court is a place where justice is administered. Labour Court is no exception of it. Industrial justice is administered through Labour Courts. Although there are manifold peaceable methods of settling labour disputes, yet there are numerous conflicts which are not or cannot be adjusted conclusively without the aid of judicial proceeding.

The Labour Courts play an important role for maintenance of industrial peace through settlement of issues on labour management problems and hence they enjoy the confidence of both the employers and the workers.

The need for labour courts as a distinct jurisdiction from the common court system is due to (1) the different nature of the conflict, (2) the different composition of the tribunal and (3) the different procedure involved.

CONSTITUTION OF LABOUR COURT

A Labour Court is constituted under section 214 of the Bangladesh Labour Act, 2006. According to section 214-

"(1) For the purposes of this Act, the Government shall, by notification in the official Gazette, establish as many Labour Courts as it considers necessary. (2) Where more than one Labour Court is established under sub-section (1), the Government shall specify in the notification the territorial limits within which each one of them shall exercise jurisdiction under this Act.

(3) A Labour Court shall consist of a Chairman and two Members to advise him, but in case of trial of any offence or in disposal of any matter under Chapter X and XII it shall be constituted with the Chairman only.

(4) The Chairman of the Labour Court shall be appointed by the Government from amongst the District judges or an Additional District judges.

(5) The terms and conditions of appointment of the Chairman of the Labour Court shall be determined by the Government.

(6) 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 and they shall be appointed in the manner hereinafter provided in sub-section (9).

(7) 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.

(8) 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.

(9) 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:

Provided that the Chairman may select any member from either of the panels as a member of the Labour Court in respect of more than one such case pending before the Labour Court.

(10) 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.

(11) If any member of the Labour Court is absent at the time of its constitution or is absent at the time of its constitution or absent from or is otherwise unable to attend, any sitting of the Court, whether at the beginning of the hearing of a case or during the continuance of the hearing thereof, the proceedings of the Court may begin or continue, as the case may be, in his absence and the decision or award of the Court may be given in the absence of such member ; and no act, proceeding decision or award of the Court shall be invalid or be called in question merely on the ground of such absence or on the ground of any vacancy in, or any defect in the constitution of, the Labour Court.

Provided that if any Member informs the Chairman beforehand of his absence, the Chairman shall nominate another Member from the panel of the concerned parties :

Provided further that the opinions of the Members of both the sides shall be mentioned in the judgment.

(12) The provisions of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898) shall apply to a Labour Court.

(13) All Labour Courts shall be subordinate to the Tribunal."

JURISDICTION OF LABOUR COURT

Sub-section *(10)* of section 214 of the Bangladesh labour Act, 2006 provides that 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.

If any member of the Labour Court is absent from, or is otherwise unable to attend, any sitting of the Court, the proceedings of the Court may continue, and the decision or award may be given in the absence of such member; and no act, proceeding, decision or award of the Court

shall be invalid or be called in question merely on the ground of such absence, or on the ground of any vacancy in, or any defect in the constitution of the Labour Court.

POWERS AND FUNCTIONS OF LABOUR COURT

It has been held that a Labour Court has been set up to do justice to the worker-complainants and not to throw out the cases filed by the workers on technical grounds. *[Md. Azizul Huq vs. Chairman Labour Court Khulna and Other. (1996) 48 DLR 527]*

The procedure to be followed by a labour court in trying cases, civil and criminal, has been enumerated in sections 215 and 216.

When a labour court tries an offence it has to follow the procedure laid down in section 215 which runs as follows :

Procedure and powers of Labour Courts in trial of offences : (Sec : 215) (1) Subject to the provisions of this Act, a Labour Court shall, while trying an offence, 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.

When it tries cases of civil nature it shall follow the procedure as laid down in section 216 which read as follows :

Procedure and powers of Labour Courts in any matter other than trial of offences: (1) A Labour Court shall for the purpose of adjudicating and determining any matter or issue or dispute 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, including the powers of-

(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.

(g) In order to save the frustration of purpose of the case property the Labour Court may pass interim order upon any party..

(2) Subject to this Act, no court-fee shall be payable for filing, exhibiting or recording any document in, or obtaining any document from a Labour Court.

(3) A Labour Court shall, by notice to be served through process server or special messenger or by registered post or by both the modes, ask the opposite party to file written objection or written statement, if any, within a period not exceeding ten days from the date of filing of the case.

(4) The Court may, for reasons to be recorded in writing, extend the time for filing objection or written statement for a period not exceeding seven days in all.

(5) If any party fails to file any written statement or objection within the time specified in the notice or the extended time the case shall be heard and disposed of *ex-parte.*

(6) The Labour Court shall not grant adjournment of the hearing of a case on the prayer of any party for more than seven days in all:

Provided that, if both the parties file application for adjournment, an adjournment for not more than ten days in all may be allowed.

(7) If the party filing the case is absent on the date of hearing, the case shall be dismissed for default.

Provided that the Court shall have jurisdiction to set aside the order of dismissal if any application is made by the petitioner within three months from the date of such order of dismissal of the case

(8) If the opposite party is absent on the date of hearing, the case shall be heard and disposed of exparte.(9) A case which is dismissed for default, shall not bar the filing of a fresh case on the same cause of action, provided such fresh case is filed, if not otherwise barred, within a period of three months from the date of dismissal.

(10) A Labour Court may, on an application filed by all the parties to a case, and after giving a hearing to them, allow the withdrawal of the case at any stage of the proceedings thereof, if it is satisfied that the dispute has been amicably resolved.

(11) An award or decision or judgment of a Labour Court shall be given in writing and delivered in open Court, and a copy thereof shall be given to each party.

(12) An award or decision or judgment of a Labour Court shall, in every case, be delivered, unless the parties to the dispute given their consent in writing to extend the time-limit, within sixty days following the date of filing of the case:

Provided that no award or decision or judgment of a Labour Court shall be invalid merely on the ground of delay in its delivery.

In a question whether Labour Court can grant interim order of stay it has been held that an adjudication on an industrial dispute or a proceeding for enforcement of any guaranteed right through a matter of civil nature, is not a suit and does not attract all the panoply of powers of the Code of Civil Procedure. From a plain reading of section 36(2), it is clear that in adjudicating an industrial dispute, the Labour Court acts as a civil Court for limited purpose- it will not exercise power like those given in Order IX or Order. XXXIX of the Code of Civil

Procedure which civil Court may exercise in a suit but not necessary to decide an industrial dispute. *[Pubali Bank Vs. The Chairman, First Labour Court Dhaka (1992) 44 DLR (AD) 40].*

In *Ibrahim Shaikh vs. Chairman, Labour Court, Khulna Division, Khulna and others (1995) 47 DLR 498* it has been held that a Labour Court when acts as a civil court : Labour Court acts as a civil court for a limited purpose. It will not exercise power like those given in Order IX or Order XXXIX Rule I CPC which the civil court may exercise in a suit.

POWERS AND FUNCTIONS OF LABOUR APPELLATE TRIBUNAL

The Labour Appellate Tribunal is the appellate authority over awards and decisions of Labour Courts. The Labour Appellate Tribunal is constituted under section 218 of the Bangladesh Labour Act, 2006. It consists of one member who shall be appointed by the Government, by notification in the official Gazette, from amongst person who is or has been a judge or an Additional judge of the High Court Division.

Labour Appellate Tribunal : (1) For the Purpose of this Act there shall be a Labour Appellate Tribunal which shall consist of a Chairman, and, if the Government so deems fit, such number of other members as the Government may appoint from time to time.

(2) The Chairman and the members, if any, of the Tribunal shall be appointed by the Government by notification in the official Gazette on such terms and condition as the Government may determine.

(3) The Chairman of the Tribunal shall be a person who is or was a Judge or an Additional Judge of the Supreme Court, and a member of the Tribunal shall be a person who is or was a Judge or an Additional Judge of the Supreme Court or who is or was a District Judge for not less than three years.

(4) If the Chairman is absent or unable to discharge his functions for any reason, the senior Member of the Tribunal, if any, shall perform the functions of the Chairman.

(5) Where members are appointed in the Tribunal, the Chairman may, for the efficient performance of the functions of the Tribunal, constitute as many Benches of the Tribunal, consisting of one or more Members of the Tribunal, including himself, where necessary, as he may deem fit.

(6) An appeal or any matter before the Tribunal may be heard and disposed of by the Tribunal sitting in Full Bench or by any Bench thereof.

(7) Subject to this Act, the Tribunal shall follow as nearly as possible such procedure as are prescribed under the Code of Civil Procedure, for hearing of appeal by an Appellate Court from original decrees.

(8) If the Members of a Bench differ in opinion as to the decision to be given on any point (a) the matter shall be decided according to the opinion of the majority, if any ; and (b) if the Members are equally divided, they shall state the point on which they differ and the case shall be referred by them to the Chairman for hearing on such point by the Chairman himself, if he is not a member of the Bench, or by one or more of the other members of the Tribunal, and

such point shall be decided according to the opinion of the Chairman or Member or majority of the Members hearing the point, as the case may be.

(9) Where a Bench includes the Chairman of the Tribunal as one of its Members and there is a different of opinion among the Members and the Members are equally divided, the decision of the Chairman shall prevail and the decision of the Bench shall be expressed in terms of the opinion of the Chairman.

(10) The Tribunal may, on appeal, confirm, set aside, very or modify the award, decision or sentence or remand a case to the Labour Court for re-hearing; and shall, save otherwise provided, exercise all the powers conferred by this Act on the Labour Court.

(11) The decision of the Tribunal shall be delivered, within a period of sixty days following the fling of the appeal:

Provide that such decision shall not be rendered invalid by reason of any delay in its delivery.

(12) The Tribunal shall have authority to punish for contempts of its authority, or that of any Labour Court, as if it were a High Court Division of the Supreme Court.

(13) Any person convicted and sentenced by the Tribunal under sub-section (12) to imprisonment for any period, or to pay a fine exceeding two hundred Taka, may prefer an appeal to the High Court Division.

(14) The Tribunal may, on its own motion or on the application of a party, transfer any application or proceeding from a Labour Court to any other Labour Court.

(15) The Tribunal shall have superintendance and control over all Labour Courts.

POWER TO PROHIBIT STRIKES AND LOCK OUTS

A Labour Court and the Labour Appellate Tribunal has the power to prohibit strike, etc. in certain circumstances. According to section 226 of the Bangladesh Labour Act, 2006- (1) When strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time when in respect of such industrial dispute, there is made to, or is pending before Lab-our Court any application, the Labour Court may, by an order in writing, prohibit continuance of the strike or lock-out.

(2) When an appeal in respect of any matter arising out of an industrial dispute is preferred to the Tribunal, the Tribunal may, by an order in writing, prohibit continuance of any strike or lock-out in pursuance of such industrial dispute which had already commenced and was in existence on the date on which the appeal was preferred.

SETTLEMENT

Sec. 2, Clause (xxv) of the Bangladesh Labour Act, 2006 defines "Settlement". According to the definition *'settlement'* means a settlement arrived at in the course of a conciliation proceeding, and includes an agreement between an employer and his worker arrived at otherwise than in the course of any conciliation proceedings, where such agreement is in writing, has been signed by the parties thereto and a copy thereof has been sent to the Director of Labour and the Conciliator ;

According to Sec.222 of the Bangladesh labour Act, 2006 (1) A settlement arrived at in the course of a conciliation proceeding or an award of an arbitrator or an award, decision or judgment of Labour Court or the award, decision or judgment of the Tribunal shall be binding -

(a) on all parties to the dispute

(b) on all other parties summoned to appear in any proceedings before a Labour Court as parties to the dispute, unless the Court specifically otherwise directs in respect of any such party ;

(c) on the heirs, successors or assigns of the employer in respect of the establishment to which the dispute relates where an employer is one of the parties to the dispute ; and

(d) where a collective bargaining agent is one of the parties to the dispute, on all workers who were employed in the establishment to which the dispute relates on the date on which the dispute first arose or who are employed therein after that date.

(2) A settlement arrived at by agreement between the employer and a trade union otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

INTERPRETATION OF SETTLEMENTS

According to section 231 of the Bangladesh Labour Act, 2006 : (1) If any difficulty or doubt arises as to the interpretation of any provisions of an award or settlement, it shall be referred to the Tribunal.

(2) The Tribunal shall, after giving the parties an opportunity of being heard, decide the matter, and its decision shall be final and binding on the parties.

A regards **Interpretation of Terminated Settlement :** Held that the right and obligations of a terminated settlement shall remain in force till a new settlement is arrived at between the parties or an award is given by a Labour Court and that the employer cannot reduce the wages of the worker even after termination of the settlement. *[Zenith Packages Vs. Labour Appellate Tribunal (1999) 51 DLR 284].*

The Court is competent under 222 to give interpretation is respect of a terminated settlement where in a given case the employer unilaterally acts detrimental to the emoluments and benefits obtained under a terminated settlement, such emoluments and benefits shall continue to remain in force till a new agreement is reached between the employer and the workers or an award is made by the Labour Court. *[Zenith Packages Ltd Vs Member, Labour Appellate Tribunal, Dhaka and ors 177]*

STRIKE

According to Sec. 2, Clause (xxii) of the Bangladesh Labour Act, 2006 *"strike"* means cessation of work by a body of persons employed in any establishment acting in combination or a concerted refusal, or refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment ;

The right of strike is the right guaranteed under the ILO conventions as a weapon for achievement of demands of the workers though the process of collective bargaining.

A legal Strike is declared under Sec. 211 of the Act. It runs as follows :

Strike and lock-out : (Sec : 211) (1) The party which raised the dispute may, within fifteen days of the issue to it a certificate of failure under section 210(11), either give to the other party a notice of strike or lockout, a the case may be, to commence on a day, not earlier than seven days and not later than fourteen days of the date of such notice, to be specified therein, or make an application to the Labour Court for adjudication of the dispute:

Provided that no collective bargaining agent shall serve any notice of strike unless three-fourths of its members have given their consent to it through a secret ballot specially held for he purpose, under the supervision of the Conciliator, in such manner as may be prescribed.

(2) If a strike or lock-out is commenced, either of the parties to the dispute may make an application to the Labour Court for adjudication of the dispute.

(3) 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 :

Provided that the Government may, by order in writing, prohibit a 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.

(4) In the case of any of the public utility services, the Government may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out.

(5) In any case in which the Government prohibits a strike or lock-out, it shall forthwith refer the dispute to the Labour Court.

(6) The Labour Court shall, after giving both the parties to the dispute an opportunity of being heard, make such award as it deems fit as expeditiously as possible but not exceeding sixty days from the date on which the dispute was referred to it:

Provided that the Labour Court may also make an interim award on any matter or dispute:

Provided further that any delay by the Labour Court in making an award shall not affect the validity of any award made by it.

(7) An award of the labour Court shall be for such period as may be specified in the award which shall not be more than two years.

(8) No strike shall 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. But other provisions of this Chapter relating to resolving industrial dispute shall apply to such establishments.

Go slow' in comparison to strike- *Held* : Go slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontented or disgruntled workmen sometimes resort to. It would not be far wrong to call this dishonest. For, while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, "go slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off, during the "go slow" the machinery is kept going on a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, "go slow" has always been considered a serious type of misconduct. *[Bharat Sugar Mills Ltd. Vs Jai Singh, (1962) 3 SCR 684= (1962) 2 LLJ 466].*

PARTICIPATION COMMITTEE

The Bangladesh Labour laws, 2006, in order to promote measures for securing and preserving amity and good relations between the employers and the workmen, and to that end, to comment upon matters of their common interest or concern and endevours to compose any material difference of opinion provides for formation of participation committee for certain establishment.

According to section 205 of the Bangladesh Labour Act, 2006- (1) The employer in an establishment in which fifty or more workers are normally employed shall constitute in the prescribed manner a Participation.

(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 PARTICIPATION COMMITTEE

Functions of the Participation Committee have been defined in section 206 of the Bangladesh Labour Act, 2006. According to the section- (1) The functions of the Participation 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.

(2) A unit participation committee shall, subject to the supervision of the participation committee, discharge, as far as practicable, those functions as the specified in sub-section (1).

Meetings and Implentation of recommendation of the Participation Committee: The mode of meeting of the participation commiitee and the implentation of the recommendations of the committee have been prescribed in section 207 and 208 of the Bangladesh Labour Act, 2006 respectively.

MEETINGS OF THE PARTICIPATION COMMITTEE

According to section 207- (1) The Participation Committee shall meet at least once in every two months to discuss and exchange views and recommend measures for performance of the functions under section 202.

(2) 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.

Implementation of recommendations of Participation Committee : According to section 208- (1) The employer and the registered trade union shall take necessary measures to implement the specific recommendations of the participation committee within the period specified by the Committee.

(2) If, for any reason, the employer or the registered trade union finds it difficult to implement the recommendations within the specified period, he or it shall inform the Committee about it and make all out efforts to implement the same as early as possible.

CHAPTER-III

LAW RELATING TO ESTABLISHMENTS

DANGEROUS PART OF THE MACHINERY

The term dangerous part of machinery is not defined in the Bangladesh Labour Act, 2006. So it has to be understood according to the meaning given to them in common parlance.

In considering whether a machine is dangerous the contingency of carelessness on the part of the workman in-charge and the frequency with which the contingency is likely to arise are matters for consideration. A Part of the machinery would be called dangerous if it is possible to case injury to anybody while acting in a way in which a human being may reasonably be expected to act in normal circumstances. Merely because an accident had occurred it cannot be said that the part of the machinery which was responsible for the accident for the dangerous part.

The test whether a part of a machine is dangerous or not is objective. The question to be answered for determining as to whether a particular pat of a machine is dangerous or not is whether the part of the machinery is in such position and the method of operation is such that in ordinary course of human affairs danger may reasonably result from its use if it is not fenced.

SAFEGUARD PROVIDING FOR PROTECTION OF HEALTH

Chapter V of the Bangladesh Labour Act (Section 51 to 60 deals with the provision for the protection of Health of workers employed in establishments.

These provisions have been borrowed from Chapter III of the Factories Act 1965. The provisions are (i) Cleanliness, (ii) Ventilation and temperature, (iii) Dust and fume, (iv) Disposal of wastes and effluents, (v) Artificial humidification, (vi) Overcrowding, (vii) Lighting, (viii) Drinking water, (ix) Latrines and urinals, and (x) Dust Bean and Spittoon.

The details of the above provisions are as follows:

1. Cleanliness : Section 51 of the Bangladesh Labour Act, 2006 provides that- Every establishment shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

(a) accumulation of dirt and refuge shall be removed daily by sweeping or by any other effective method from the floors and benches of work-rooms and from staircases and passage and disposed of in a suitable manner ;

(b) the floor of every work-room shall be cleaned at least once in every week by washing, using disinfectant where necessary or by some other effective method;

(c) where the floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;

(d) all inside walls and partitions, all ceilings, or tops of rooms, and walls, side and tops or passages an staircases shall— (i) where they are painted or varnished, be repainted or

revarnished at least once in every three years, (ii) where they are painted or varnished and have smooth imperious surface, be cleaned at least once in every fourteenth months, by such methods as may be prescribed, (iii) in any other case, be kept white-washed or colour-washed and the white-washing or colour-washing shall be carried out at least once in every fourteen months ; and

(e) the date on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

2. Ventilation and temperature : Section 52 regarding ventilation and temperature reads as follows : (1) Effective and suitable provisions shall be made in every establishment for securing and maintaining in every work-room adequate ventilation by the circulation of fresh air ;

(2) such temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health.

(3) the walls and roofs, as required by sub-section (2), shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;

(4) where the nature of the work carried on in the establishment involves, or is likely to involve, the production of excessively high temperature, such adequate measures as are practicable, shall be taken to protect the workers there from by separating the process which produces such temperature from the work-room by insulating the hot parts or by other effective means.

(5) If it appears to the Government that in any establishment or class or description of establishments excessively high temperature can be reduced by such methods as white-washing, spraying or insulating and screening outside walls or roofs or windows or by raising the level of the roof, or by insulating the roof either by an air space and double roof or by the use of insulating roof materials, or by other methods, it may prescribe such of those or other methods to be adopted in the establishment.

3. Dust and fume : Section 53 of the Bangladesh labour Act, 2006 is as follows : (1) In every establishment in which, by reason of any manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, effective measures shall be taken to prevent its accumulation in any work-room and it inhalation by workers, and if any exhaust appliance is necessary for this purpose, it shall he applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any establishment no stationary internal combustion engine shall be operated unless the exhaust is conducted into open air, and no internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to the workers employed in the work-room.

4. Disposal of wastes and effluents : Section 54 provides that Effective arrangements shall be made in every establishment for disposal of wastes and effluents due to the manufacturing process carried on therein.

5. Artificial humidification : Provision for artificial humidifiation for textile industries is made is section 55. The section is as under : (1) In any establishment in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

(2) If it appears to an Inspector that the water used in an establishment for increasing humidity which is required to be effectively purified under sub-section (1) is not effectively purified, he may serve on the employer of the establishment an order in writing, specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date.

6. Overcrowding : Overcrowding in workplace is prohibited by section 56. (1) No work-room in any establishment shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of the provisions of sub-section (1), there shall be provided for every worker employed in a work-room at least 9.5 cubic metre of space in the establishment.

Explanation : For the purpose of this sub-section no account shall be taken of a space which is more than 4.25 metre above the level of the floor of the room.

(3) If the Chief Inspector by order in writing so requires, there shall be posted in each work-room of an establishment a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.

(4) The Chief Inspector may, by order in writing, exempt, subject to such conditions as he may think fit to impose, any work-room from the provisions of this section if he is satisfied that compliance therewith in respect of such room is not necessary for the purpose of health of the workers employed therein.

7. Lighting : Section 57 of the Bangladesh Labour Act is as follows : (1) In every part of an establishment where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(2) In every establishment all glazed windows and skylights used for the lighting of the work-room shall be kept clean on both the outer and inner surfaces and free from obstruction as far as possible.

(3) In every establishment effective provisions shall, so far as is practicable, be made for the prevention of- (a) glare either directly from any surface of light or by reflection from or polished surface, and (b) the formation of shadows to such an extent as to cause eye strain or risk of accident to any worker.

8. Drinking water : Provision for drinking water is made in section 58. (1) In every establishment effective arrangement shall be made to provide and maintain at a suitable point

conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.

(2) All such points where water is supplied shall be legibly marked 'Drinking Water' in Bangla.

(3) In every establishment wherein two hundred fifty or more workers are ordinarily employed, provision shall be made for cooling the drinking water during the hot weather by effective means and for distribution thereof.

(4) Where dehydration occurs in the body of workers due to work near machineries creating excessive heat, there workers shall be provided with oral re-hydration therapy.

9. Latrines and urinals: According to section 59 of the Bangladesh Labour Act, 2006 in every establishment-

(a) sufficient latrines and urinals of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are in the establishment ;

(b) such latrines and urinals shall be provided separately for male and female workers ;

(c) such latrines and urinals shall be adequately lighted and ventilated ;

(d) all such latrines and urinals shall be maintained in a clean and sanitary condition at all times with suitable detergents and disinfectants.

10. Dust bean and Spittoon : (Sec: 100) For cleanliness and hygienic condition provision for dust bean and spittoon is made in section 60 of the Bangladesh Labour Act, 2006 which reads as under: (1) In every establishment there shall be provided, at convenient places, sufficient number of dust beans and spittoons which shall be maintained in a clean and hygienic condition.

(2) No person shall throw any dirt or spit within the premises of an establishment except in the dust beans and spittoons provided for the purpose.

(3) A notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

FACILITIES PROVIDED FOR THE WORKERS

Chapter VIII of the Bangladesh Labour Act, 2006 (section 89-99), provide for various amenities for the welfare of the workers which the factory authorities are bound to provide for. Besides the Factories Act, the welfare provisions of the Shops and Establishment Act, 1965 as well as the Tea Plantation Labour Ordinance, 1962 have also been incorporated in this Chapter.

1. First-aid appliances : Section 89 of the Bangladesh Labour Act, 2006 provides for first aid appliances for workers. The section reads as follows " (1) There shall, in every establishment be provided and maintained, so as to be readily accessible during all working hours, first-aid boxes or cupboards equipped with the contents prescribed by rules.

(2) The number of such boxes or cupboards shall not be less than one for every one hundred fifty workers ordinarily employed in the establishment.

(3) Every first-aid box or cupboard shall be kept in charge of a responsible person who is trained in first-aid treatment and who shall always be available during the working hours of the establishment.

(4) A notice shall be affixed in every work-room stating the name of person in charge of the first-aid box or cupboard provided in respect of that room and such person shall wear a badge so as to facilitate identification.

(5) In every establishment wherein three hundred or more workers are ordinarily employed, there shall be provided and maintained a sick room with dispensary of the prescribed size, containing the prescribed equipment or similar facilities, in the charge of such medical and nursing staff as may be prescribed.

2. Washing facilities : Section 91 provides that - In every establishment-

(a) adequate and suitable facilities for washing and bathing shall be provided and maintained for the use of the workers therein ;

(b) separate and adequately screened facilities shall be provided for the use of male and female workers ; and

(c) such facilities shall be conveniently accessible and shall be kept clean.

Rules in this regard has yet to be made. In the previous Factories Rules provision was there for (a) adequate and suitable facilities for washing and bathing for the use of the workers; (b) separate and adequately screened facilities for the use of male and female workers; (provision for trough with tap or jets, wash-basins ,taps, showers etc. at specific intervals. In shops and establishments also Sanitary conveniences, washing facilities and facilities for taking meals etc..

3. Canteens: Section 92 provides that -(1) In every establishment wherein more than one hundred workers are ordinarily employed, there shall be provided adequate number of canteens for the use of the workers.

(2) The Government may make rules providing for— (a) the standards in respect of construction, accommodation, furniture and other equipment of the canteen ; and (b) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen.

(3) The managing committee to be formed under the rules shall determine the foodstuff to be served in the canteen, and the charges therefor.

4. Shelters, etc. : Provision for shelter is made in section 93 of the Act. It reads as follows : (1) In every establishment wherein more than fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms, and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers.

Provided that any canteen maintained in accordance with the provisions of section 92 shall be regarded as part of the requirements of this sub-section:

Provided further that where a lunch room exist, no worker shall eat any food in the work room.

(2) The shelters, rest rooms or lunch rooms provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) In the establishments wherein more than 25 female workers are employed, separate shelter rooms are to be maintained and in establishment wherein less then 25 female workers are employed, separate and adequate spaces with screen shall be provided.

5. Rooms for children : Section 94 provides - (1) In every establishment, wherein forty or more workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, adequately lighted and ventilated and maintained in a clean and sanitary condition and shall be under the charge of woman trained or experienced in the care of children and infants.

(3) Such rooms shall be conveniently accessible to the mothers of the children accommodated therein and so far as is reasonably practicable they shall not be situated in close proximity to any part of the establishment where obnoxious fumes, dust or odours are given off or in which excessively noisy processes are carried on.

(4) Such rooms shall be solidly constructed and all the walls and roof shall be of suitable heat resisting materials and shall be water-proof.

(5) The height of such rooms shall not be less than 360cm from the floor to the lowest part of the roof and there shall be not less than 600sq. cm of floor area for each child to be accommodated.

(6) Effective and suitable provisions shall be made in every part of such room for securing and maintaining adequate ventilation by the circulation of fresh air.

(7) Such rooms shall be adequately furnished and equipped and in particular there shall be one suitable cot or cradle with necessary bedding for each child, at least one chair or equivalent seating accommodation for the use of each mother while she is feeding or attending to her child and a sufficient supply of suitable toys for the older children.

(8) A suitable fenced and shady open air play-ground shall be provided for the older children;

Provided that the Chief Inspector may, by order in writing, exempt any establishment from compliance with this sub-rule if he is satisfied that there is not sufficient space available for the provision of such a playground.

Object of establishment of Creches : The object of establishment of creches in factories as described by the Royal Commission in their report was as follows: "*Creches are not uncommon in factories employing women. In many of the factories* employing women in substantial number, no creches have been provided. As a result of their absence infants are taken into the mills and found lying on sacking, in bobbin boxes and other unsuitable places, exposed to the noise and danger of moving machinery and a dust laden atmosphere."

Based on the above comment and recommendation of the Royal Commission the provision for room for children was first embodied in the Factories Act, 1934. The provision has also been incorporated in the Factories Act, 1965.

6. Recreational and educational facilities in tea plantation : Section 95 provides that t he Government may, in respect of tea plantations : (a) make rules requiring every employer to make provision for such recreational facilities for the workers and their children as may be prescribed ; (b) where the children of the tea plantation workers between the ages of six and twelve of the workers exceed twenty-five in number, make rules requiring the employer to provide educational facilities for the children in such manner and of such standard as may be prescribed. (c) In every tea plantation there shall be established adequate medical centers for the workers and their children as may be prescribed by rules.

7. Housing facilities in tea plantation : Section 96 of the Bangladesh Labour Act,2006 provides that every employer in a tea plantation shall provide housing facilities to every worker and his family residing in the tea plantation.

8. Facilities for daily necessities, etc. in tea plantation : Every employer in a tea plantation is under obligation as per section 97 of the Act to provide facilities within easy reach of the workers for obtaining the daily necessities of life.

9. Medical care for newspaper workers : Under section 98 Every newspaper worker and his dependents are entitled to medical care at the cost of the newspaper establishment in such manner and to such extent as may be prescribed.

10. Compulsory Group Insurance : Section 99 of the Bangladesh Labour Act made a new and unique provision for the workers a group insurance scheme. According to this section Government may, in the manner provided by rules, introduce group insurance, in the establishments wherein minimum 200 permanent workers are employed.

11. Maintenance of Safety Record Book : Section 90 of the Act provides that in every establishment/factory wherein more than twenty five workers are employed, shall maintain compulsorily, in the prescribed manner, a safety record book and safety board.

PRECAUTIONS AND SAFETY MEASURE OF WORKERS

Bangladesh Labour Act, 2006 like the Factory Act 1965 contains many safety provisions of high standard based on Modern Industrial practice.

The Act places the responsibility of the employer of every establishment for safety matter.

Chapter VI of the Bangladesh Labour Act, 2006 (sections 61-78) deals with precautions and safety measure of workers. This Chapter like the provisions of the previous law places the responsibility of safety matters upon the employer. The employer must comply with safety provisions of the Act. However the inspector are always available for consultation and they have to pay periodical visits to look after the safety measures.

1. Safety of building and machinery : Section 61 provides that (1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in an establishment is in such a condition that it is dangerous to human life or safety, he may serve on the employer of the establishment an order in writing specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date. (2) If it appears to the Inspector that the use of any building or part of a building or of any part of the ways, machinery or plant in the establishment involves imminent danger to

human life or safety, he may serve on the employer of the establishment an order in writing prohibiting its use until it has been properly repaired or altered.

2. Precaution in case of fire : In section 62 various precautionary measures have been provide to the compulsorily complied with by the employers. These are (1) Every establishment shall be provided with at least one alternative connecting stairway with each floor and such means of escape in case of fire and fire-fighting apparatus, as may be prescribed by rules.

(2) If it appears to the Inspector that any establishment is not provided with the means of escape he may serve on the employer of the establishment an order in writing specifying the measures which, in his opinion, should be adopted before a date specified in the order.

(3) In every establishment the doors affording exit from any room shall not be locked or fastened so that they can be easily and immediately opened from inside while any person is within the room and all such doors, unless they are of the sliding type, shall be constructed to open outwards or where the door is between two rooms, and all such doors, unless they are of the sliding type, shall be constructed to open outwards or where the door is between two rooms, in the direction of the nearest exit from the building and no such door shall be locked or obstructed while work is being carried on in the room.

(4) E every window, door, or other exit affording means of escape in case of fire, other than the means of exit in ordinary use, shall be distinctively marked in Bangla and in red letters of adequate size or by some other effective and clearly understood sign.

(5) In every establishment there shall be provided effective and clearly audible means of giving warning in case of fire to every person employed therein.

(6) A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in every room of the establishment.

(7) Where ten workers are ordinarily employed in any place above the ground floor, or explosive or highly inflammable materials are used or stored, effective measures shall be taken to ensure that all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such case.

(8) Where fifty or more workers and employees are employed shall arrange at least once in a year a mock fire-fighting and the employer shall maintain a book of records in this regard.

3. Fencing of machinery : Section 63 provides that the following shall be securely fenced by the safeguards of substantial construction which shall be kept in position while the part of machinery required to be fenced are in motion or in use, namely- (a) every moving part of a prime mover, and every fly wheel connected to a prime mover; (b) the head-race and tail-race of every water wheel and water turbine; (c) any part of a stock-bar which projects beyond the head stock of a lathe; and (d) every part of an electric generator,- a motor or rotary converter,, every part of transmission machinery, and (iii) every dangerous part of any machinery. Every set screw, bolt and key on any revolving shaft, spindle wheel or pinion and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced, to prevent such contact.

4. Work on or near machinery in motion : Precaution in examining machinaries while in motion has been provided in section 64. Where in any establishment it becomes necessary to examine any part of machinery while the machinery is in motion or as a result of such examination to carry out any mounting or shipping of belts, lubrication or other adjusting operation while the machinery is in motion such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight-fitting clothing whose name has been recorded in the register prescribed in this behalf and while he is so engaged such worker shall not handle a belt at a moving pulley unless the belt is less than fifteen centimeters in width and unless the belt-joint is either laced or flush with the belt.

5. Striking gear and devices for cutting off power : According to section 65 in every establishment- (a) suitable striking gear or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which from part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from cropping back on the first pulleys ; (b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion. Besides that suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room.

6. Self-acting machines : Section 66 provides that- no traversing part of a self-acting machine in any establishment and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass whether in the course of his employment or other distance of forty five centimeters from any fixed structure which is not part of the machine:

7. Casing of new machinery : According to section 67 in all machinery driven by power (a) every set screw, belt or key or any revolving shaft, spindle wheel or pinion shall be so, sunk, encased or otherwise effectively guarded to prevent danger ; and (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased unless it is so situated as to be as safe it would be if it were completely encased.

8. Cranes and other lifting machinery : According to Section 68 the following provisions shall apply in- every part thereof, including the working gear, whether fixed or movable, ropes and chains and anchoring and fixing appliances shall be of good construction, sound material and adequate strength, properly maintained, thoroughly examined by a competent person at least once in every period of twelve months and a register shall be kept containing the prescribed particulars of every such examination. No such machinery shall be loaded beyond the safe working load which shall be plainly marked thereon ; and while any person is employed or working on or near the wheel-tract of a travelling crane in any place, where he would be liable to be struck by the crane, effective measures shall be taken to ensure that crane does not approach within six metres of that place.

9. Hoists and lifts : Maintenance of safety hoist and lifts is provide in section 69. (1) In every establishment every hoist and lift shall be- (a) of good mechanical construction, sound material and adequate strength, (b properly maintained, (c) shall be thoroughly examined by

competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination ;

(2) every hoistway and liftway shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part ;

(3) the maximum safe working load shall be plainly marked on every hoist or lift and no load greater than such load shall be carried thereon ;

(4) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing ;

(5) every gate to shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(6) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in an establishment after the commencement of this Act, namely- (a) where the cage is supported by rope or chain there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load ; (b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments ; (c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

10. Revolving machinery : According to section 70 "(1) In every room in an establishment in which the process of grinding is carried on, there shall be permanently affixed to, or placed near, each machine in use a notice indicating the following - (a) maximum safe working peripheral speed of every grind stone or abrasive wheel: (b) the speed of the shaft or spindle upon which the wheel is mounted ; (c) the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measures shall be taken in every revolving vessel, cage, basket, flywheel, pulley dice or similar appliance driven by power is not exceeded."

11. Pressure plant : Section 71 provides that if in any establishment any part of the plant or machinery used in manufacturing process is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such part is not exceeded.

12. Floors, stairs and means of access : Section 72 provides that in every establishment— (a) all floors, stairs, passages and gangways shall be of sound construction and properly maintained and where it is necessary to ensure safety steps, stairs, passages and gangways shall be provided with substantial handrails; (b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any

person is, at any time, required to work; and (c) all floors, ways and stairways shall be clean, wide and clear of all obstructions.

13. Pits, sumps, opening in floors, etc. : According to section 73 every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction or contents is or may be a source of danger, shall be either securely covered or securely fenced.

14. Excessive weights : Section 74 provides that no person shall be employed in any establishment to lift, carry or move any load so heavy as to be likely to cause him injury.

By Rules of the previous law no man, women or young person were permitted to carry loads above 68 lb, 50 lb and 35 lb respectively.

15. Protection of eyes : According to section 75 the Government may, in respect of any manufacturing process carried on in any establishment, by rules, require that effective screens of suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of a process which involves- (a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or (b) risk to the eyes by reason of exposure to excessive light or heat.

In an Indian case it has been held that hanging of goggles in the office room is not enough, but the workers must be informed of their whereabouts, only then the requirements of section 37 can be said to have been complied with.*[Finch Telegraph Construction and Maintenance Co. Ltd. (1949) All ER 452]*

16. Powers to require specifications of defective parts or tests of stability : Section 76 provides that if it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in an establishment, is in such a condition that it may be dangerous to human life or safety, he may serve on the employer of the establishment an order in writing, requiring him before a specified date- (a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or (b) to carry out such tests as may be necessary to determine the strength or quality or any specified parts and to inform the Inspector of the result thereof.

17. Precautions against dangerous fumes : Section 17 provides that in any establishment no person shall enter or be permitted to enter any chamber, tank, vat pit, pipe, flue or other confined space in which dangerous fumes are likely to be present to such an extent as to involve risks of persons being overcome thereby, unless it is provided with a manhole of such size, as may be prescribed or other effective means of egress.

(2) No portable electric light of voltage exceeding twenty-four volts shall be permitted in any establishment for use inside any confined space such as is referred to in sub-section (1) and where the fumes present are likely to be inflammable, lamp or light other than of flame proof construction shall be permitted to be used in such confined space.

(3) No person in any establishment shall enter or be permitted to enter any such confined space until all practicable means have been taken to remove any fumes which may be present and to prevent any ingress of fume and unless either- (a) a certificate in writing has been

given by a competent person, based on a test carried out by himself, that the space is from dangerous fumes and fit for persons to enter, or (b) the worker is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person standing outside the confined space.

(4) Suitable breathing apparatus, reviving apparatus and belts and ropes shall, in every establishment, be kept ready for instant use beside any such confined space as aforesaid which any person as entered, and all such apparatus shall be periodically examined and certified by a competent person to be fit for use ; and a sufficient number of persons employed in every establishment shall be trained and practiced in the use of all such apparatus and in the method of restoring respiration.

(5) No person shall be permitted to enter in any establishment, any boiler furnace, boiler, flue chamber, tank, at, pipe or other confined space for the purpose of working or making any examination therein until it has been sufficiently cooled by ventilation or otherwise to be safe for persons to enter.

18. Explosive or inflammable dust, gas, etc. : Regarding explosive substances precautionary measures have been provided in section 88. According to this section (1) Where manufacturing process produces dust, gas, fume or vapour of such character as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by-(a) effective enclosure of the plant or machinery used in the process ; (b) removal or prevention of the accumulation of such dust, gas, fume or vapour ; (c) exclusion or effective enclosure of all possible sources of ignition.

(2) Where the plant is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measure shall be taken to restrict the spread and effects of the explosion by the provision in the plant or machinery of chokes, baffles, vents or other effective appliances.

(3) Where any part of the plant contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely- (a) before the fastening of any joint of any pipe connected with the part of the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part or any such pipe shall be effectively stopped by a stop-valve or other means; (b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure; (c) where any such fastening, as aforesaid, has been loosened or removed, effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part or pipe until the fastening has been secured ; or as the case may be, securely replaced:

(4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected in any establishment to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have been first taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non-explosive or non-inflammable, and no such substance shall be

allowed to enter such plant, tank or vessel after any such operation until the mental has cooled sufficiently to prevent any risk of igniting the substance.

PROVISION RELATING TO REGULATION OF HOURS OF WORKS

Working hours of workers and extra wages for overtime work i.e. the work beyond prescribed limit etc. are provided in Chapter IX of the Bangladesh Labour Act, 2006. The provisions are as follows :

1. Daily hours : According to section 100 of the Bangladesh Labour Act, 2006 No adult worker shall ordinarily be required or allowed to work in an establishment for more than eight hours in any day:

Provided that, subject to the provisions of section 108, any such worker may work in an establishment not exceeding ten hours in any day.

2. Interval for rest or meal : Section 101 provides that any worker in any establishment shall not be liable to work either- (a) for more than six hours in any day unless he has been allowed an interval of at least one hour during that day for rest or meal ; (b) for more than five hours in any one day unless he has been allowed an interval of at least half an hour during that day for rest or meal ; or (c) for more than eight hours unless he has had an interval under clause (a) or two such intervals under clause (b) during that day for rest or meal.

3. Weekly hours : Section 102 provides for maximum hours of work in a week. The section reads as follows : (1) No adult worker shall ordinarily be required or allowed to work in an establishment for more than forty-eight hours in any week.

(2) Subject to the provisions of section 108, an adult worker may work for more than forty-eight hours in a week: Provided that the total hours of work of an adult worker shall not exceed sixty hours in any week and on the average fifty-six hours per week in any year: Provided further that in the case of a worker employed in an establishment which is a road transport service, the total hours or overtime work in any year shall not exceed one hundred and fifty hours. Provided further that the Government, if satisfied that in public interest or in the interest of economic development such exemption or relaxation is necessary, in certain industries, by order in writing under specific terms and conditions, may relax the provision of this section or exempt, for a maximum period of six months, from the provision of this section at a time.

4. Weekly holiday : According to section 103 An adult worker employed in an establishment - (a) which is a shop or commercial establishment, or industrial establishment, shall be allowed in each week one and half days holiday and in factory and establishment one day in a week; (b) which is a road transport service, shall be allowed in each week one day's holiday of twenty four consecutive hours ; and no deduction on account of such holidays shall be made from the wages of any such worker.

In an Indian case it has been held that **General exemption cannot be given under this section. Indian Supreme Court says** the provisions of this section permit grant of exemption to specified workmen from the operation of the prohibition on weekly holidays. No general permission can be granted so as to cover all the workmen. Therefore, upon the proper

construction of the provisions it is clear that whenever workers are required (or are permitted) to work on a weekly holiday the specific permission of the Chief Inspector of Factories in respect of each and every worker who is required to work on such a day should be obtained. *[John Douglas Keith Brown Vs. West Bengal. AIR 1965 SC 1341= (1965) 2 SCR 639=(1965) 2 Cri LJ 423]*

5. Compensatory weekly holiday : In case any worker is required to work on a weekly holiday he should be given a compensatory holiday as provided in section 104. The section read as follows : Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting an establishment or the workers therein from the provisions of section 103, a worker is deprived of any of the weekly holidays provided for in that section, he shall be allowed, as soon as circumstances permit, compensatory holidays, of equal number to the holidays so deprived of.

6. Closure of shops, etc. : According to section 114 (1) Every shop or commercial or industrial establishment shall remain entirely closed for at least one and a half day in each week.

(2) The one and half day on which establishments shall remain entirely closed, shall be fixed for each area by the Chief Inspector.

(3) No shop shall on any day remain open after the hours of 8..00 o'clock *post meridiem* :

(4) The Government may, on consideration of special circumstances, alter, by notifications in the official Gazette, the closing hours of shops in any area in any season on such conditions as may be imposed.

(5) The provisions of this section shall not apply to certain shops such as - (a) docks, wharves transport services including airports ; (b) shops dealing mainly in any vegetable, meat, fish, dairy products etc.; (c) shops dealing mainly in medicines, surgical appliances, etc. (d) shops dealing in articles required for funerals, (e) shops dealing mainly in tobacco, newspapers or (f) petrol pumps ; (g) barbers' and hair dressers' shops ; (h) system of public conservancy (i) any industry which supplies power, light or water to the public ; (j) clubs, hotels, restaurants, cinemas or theatres:

7. Spread over : According to section 105 the periods of work of an adult worker in an establishment shall be so arranged that, inclusive of his interval for rest or meal under section 101, it shall not spread over more than eleven hours, and subject to such conditions as be may imposed by the Government, either generally or in the case of any particular establishment.

8. Night Shift : According to section 106 where, an adult worker in an establishment works on a shift which extends beyond midnight : (a)for the purposes of section 103 a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning from the end of his shift ; and (b) the following day for him shall be deemed to be the period of twenty-four consecutive hours beginning from the end of this shift and the hours he has worked after midnight shall be counted towards the previous day.

9. Restriction on cumulative hours of work on a vehicle : No worker, according to section 107 of the Bangladesh Labour Act, 2006, shall work or be allowed to work on a

vehicle or two or more vehicles in excess of the period during which he may be lawfully employed under this Act.

10. Extra-allowance for overtime : Where a worker works on any day or a week for more than the hours fixed, he shall be entitled in respect of the overtime work over time allowance. Section 108 of the Bangladesh Labour Act, 2006 provides as follows : (1) Where a worker works in an establishment on any day or week for more than the hours fixed under this Act, he shall, in respect of overtime work, be entitled to allowance at the rate of twice his ordinary rate of basic wage and dearness allowance and ad-hoc or interim pay, if any.

(2) Where any worker in an establishment are paid on a piece rate basis the employer, in consultation with the representatives of the workers, may, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rates of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of wages of those workers.

(3) The Government may prescribe registers to be maintained in an establishment for the purpose of securing compliance with the provisions of this section.

11. Limitation of Hours of work : It is pertinent to mention here that an employer cannot compel a worker to work beyond stipulated hours and a worker also cannot work for unlimited hours.

With regard to overtime work an important case law is *Jamuna Oil Company Ltd. Vs. Labour Court Chittagong.* If the establishment reaches a settlement with the workers in reducing the hours of work the worker's overtime will begin from the hour when the settled hour of work is reached. The worker need not wait till he works for 48 hours a week to get the overtime allowance at double to ordinary rate of his wages. For him the working hours fixed by settlement is the normal working hour and any extra hour of work beyond the settled and stipulated working hours *[General Manager, Jumuna Oil Company Ltd. Vs. Labour Court Chittagong (1999) 51 DLR (AD) 91]= 4 MLR 1999 (AD) (Vol-IV) 161].*

12. Limitation of hours of work for women : Night work without consent of the female worker is prohibited by section 109. According to this section "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."

13. Object of fixing female workers minimum hours of work : The Royal Commission on Labour in its report pointed out that "the main arguments in favour of fixing the maximum for women's hours at lower levels than those prescribed for men are that women have domestic duties to perform and that they find long hours as a greater strain".

14. Restriction on double employment : According to section 110 no adult worker shall be employed or allowed to be employed for work in more than one establishment on any day, except on permission in writing from the Chief Inspector on such terms and conditions as he may impose.

15. Notice of periods of work for adults and preparation thereof : According to section 110 "(1) There shall be displayed and correctly maintained in every establishment in

accordance with the provisions of section 337, a notice of periods of work for adult workers showing clearly the periods which adult workers may be required to work.

(2) The periods shown in the notice shall be fixed beforehand in accordance with the provisions of this section and shall be such that workers working during such periods would not be working in contravention of the provisions of sections, 100, 101, 102, 103 and 105.

(3) Where all the adult workers in an establishment are required to work during the same period, the employer, shall fix those periods generally.

(4) Where all the adult workers in an establishment are not required to work during the same periods, the employer, shall classify them into groups according to the nature of their work, and indicate the number of workers in each group.

(5) For each group which is not required to work on a system of shifts, the employer shall fix the period during which the group may be required to work.

(6) Where any group is required to work on a system of shifts, and the relays are not on a undetermined periodical changes, the employer shall fix the periods during which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are or are intended to be subject to predetermined periodical changes of shifts, the employer, shall draw up a scheme of shifts, where under the periods during which any relay of the group may be required to work on the relay which will be working at any time of the day shall be known for any day.

(8) A copy of the notice shall be sent in duplicate to the Inspector before the day on which an establishment begins work, for approval of the periods of work by the Inspector.

(9) The Inspector shall return a copy of the notice to the employer within one week of its receipt, indicating modifications if any; the employer shall immediately comply with the modifications, if made and shall preserve the approval in the records of the establishment.

(10) Any proposed change in the system of work in an establishment which will necessitate a change in the notice shall be notified to the Inspector in duplicate before the change is made, and, except with the previous sanction of the Inspector, no such change shall be made.

(11) An employer may refuse to employ a worker for any day if on that day he turns up for work more than half an hour after the time fixed for the commencement of the days work.

LEAVE AND HOLIDAYS

1. Casual leave : Casual leave is provided for in section 115. According to this section Every worker shall be entitled to casual leave the full wages for ten days in a calender year, and such leave shall not be accumulated and carried forward to the succeeding year: Provided that nothing in this section shall apply to a worker employed in a tea plantation.

2. Sick leave : Sick leave is different for different workers According to section 116 of the Bangladesh Labour Act- (1) Every worker other than a newspaper worker, shall be entitled to sick leave with full wages for fourteen days in a calender year.

(2) Every newspaper worker shall be entitled to sick leave with half wages for not less than one-eighteenth of the period of services.

(3) No such leave shall be allowed unless a registered medical practitioner appointed by the employer or, if no such medical practitioner is appointed by the employer, any other registered medical practitioner, after examination, certifies that the worker is ill and requires sick leave for cure or treatment for such period as may be specified by him.

(4) Such leave shall not be accumulated and carried forward to the succeeding year.

3. Annual leave with wages : According to section 117 of the Bangladesh Labour Act, 2006 workers of different establishment are entitled to different number of annual leave, According to the section- (1) Every adult worker, who has completed one year of continuous service in an establishment, shall be allowed during the subsequent period of twelve months leave with wages for a number of days calculated at the rate of one day- (a) in the case of a shop or commercial or industrial establishment or factory or road transport service, for every eighteen days of work ; (b) in the case of tea plantation, for every twenty two days of work ; (c) in the case of a newspaper worker, for every eleven days of work. Performed by him during the previous period of twelve months.

(2) Every worker, who is not an adult, who has completed one year of continuous service in an establishment, shall be allowed during the subsequent period of twelve months leave with wages for a number of days calculated at the rate of one day— (a) in the case of a factory, for every fifteen days of work ; (b) in the case of a tea plantation, for every eighteen days of work ; (c) in the case of a shop or commercial or industrial establishment, for every fourteen days of work performed by him during the previous period of twelve months.

(3) A period of leave allowed under this section shall be inclusive of any holiday which may occur during such period.

(4) If a worker does not, in any period of twelve months, take the leave to which he is entitled under sub-sections (1) or (2), either in whole or in part, any such leave not taken by him shall be added to the leave to be allowed to him, in the succeeding period of twelve months.

(5) Notwithstanding anything contained in sub-section (4), an adult worker shall cease to earn any leave under this section, when the earned leave due to him amounts to- (a) in the case factory or road transport service, forty days; (b) in the case of a tea plantation or shop or commercial or industrial establishment, sixty days;

(6) Notwithstanding anything contained in subsection (4) an adolescent worker shall cease to earn any leave under this section, when the earned leave (a) in the case of a factory or tea plantation, sixty days ; (b) in the case of a shop or commercial or industrial establishment, eighty days :

(7) Any leave applied for by a worker but refused by the employer for any reason, shall be added to the credit of such worker beyond the aforesaid limit mentioned in sub-section (5) and (6).

(8) For the purpose of this section a worker shall be deemed to have completed a period of continuous service in an establishment notwithstanding any interruption in service during that period due to – (a) any holiday ; (b) any leave with wages ; (c) any leave with or without wages due to sickness or accident ; (d) any maternity leave not exceeding sixteen weeks ; (e) any period of lay-off ; (f) a strike which is legal or a lock-out which is not illegal.

Festival holidays : (1) Every worker shall be allowed in a calender year eleven days of paid festival holidays.

(2) The days and dates for such festivals shall be fixed by the employer in such manner as may be prescribed.

(3) A worker may be required to work on any festival holiday, but two days' additional compensatory holidays with full pay and a substitute holiday shall be provided for him in accordance with the provisions of section 103.

Weekly holiday : According to section 103 An adult worker employed in an establishment - (a) which is a shop or commercial establishment, or industrial establishment, shall be allowed in each week one and half days holiday and in factory and establishment one day in a week; (b) which is a road transport service, shall be allowed in each week one day's holiday of twenty four consecutive hours ; and no deduction on account of such holidays shall be made from the wages of any such worker.

In an Indian case it has been held that General exemption cannot be given under this section. Indian Supreme Court says the provisions of this section permit grant of exemption to specified workmen from the operation of the prohibition on weekly holidays. No general permission can be granted so as to cover all the workmen. Therefore, upon the proper construction of the provisions it is clear that whenever workers are required (or are permitted) to work on a weekly holiday the specific permission of the Chief Inspector of Factories in respect of each and every worker who is required to work on such a day should be obtained. *[John Douglas Keith Brown Vs. West Bengal. AIR 1965 SC 1341= (1965) 2 SCR 639=(1965) 2 Cri LJ 423]*

Compensatory weekly holiday : In case any worker is required to work on a weekly holiday he should be given a compensatory holiday as provided in section 104. The section read as follows : Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting an establishment or the workers therein from the provisions of section 103, a worker is deprived of any of the weekly holidays provided for in that section, he shall be allowed, as soon as circumstances permit, compensatory holidays, of equal number to the holidays so deprived of.

Closure of shops, etc. : According to section 114 (1) Every establishment which is shop or commercial or industrial establishment shall remain entirely closed for at least one and a half day in each week.

(2) The one and half day on which establishments shall remain entirely closed, shall be fixed for each area by the Chief Inspector.

(3) No shop shall on any day remain open after the hours of 8..00 o'clock *post meridiem* :

(4) The Government may, on consideration of special circumstances, alter, by notifications in the official Gazette, the closing hours of shops in any area in any season on such conditions as may be imposed.

(5) The provisions of this section shall not apply to- (a) docks, wharves or stations and terminal offices of transport services including airports ; (b) shops dealing mainly in any vegetable, meat, fish, dairy products, bread, pasties, sweetmeats and flowers ; (c) shops dealing mainly in medicines, surgical appliances, bandages or other medical requisites ;(d) shops dealing in articles required for funerals, burials or cremation ; (e) shops dealing mainly in tobacco, cigars, cigarettes, biris, pan, liquid refreshments, newspapers or periodicals sold retail for consumption in the premises, ice ; (f) petrol pumps for the retail sale of the petrol and automobile service stations not being repair workshops ; (g) barbars' and hair dressers' shops ; (h) any system of public conservancy or sanitation, (i) any industry, business or undertaking which supplies power, light or water to the public ; (j) clubs, hotels, restaurants, catering houses cinemas or theatres:

Calculation of wages and payment during leave or holiday period : (1) For the leave or holidays allowed to a worker under the provisions of this Act, he shall be paid at the rate equal to the daily average of his full time wages including dearness allowances, and ad-hoc or interim pay, if any, for the days on which he worked during the month immediately preceding this leave but excluding any overtime allowance and bonus:

Provided that if a worker in any establishment is entitled to cash equivalent of any advantage accruing from the supply of food grains, it shall be included in his wages.

(2) A worker who has been allowed annual leave for a period of not less than four days in the case of an adult and five days in the case of an adolescent, at any time, shall, in so far as it is practicable, be paid his wages for the period of the leave so allowed, before his leave begins.

RESTRICTION EMPLOYMENT OF WOMEN

Limitation of hours of work for women has been imposed by section 109 of the Bangladesh Labour Act, 2006: According to this section 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.

Restriction of employment of women in certain work has been imposed by section 87 : According to this section like adolescent workers woman worker also shall not 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 (section 39). Further women workers shall also not be employed on dangerous machines (section 40), Like adolescent workers no woman shall be employed in any underground or underwater work (section 42).

According to section 45 employment of women worker is prohibited during certain period. No employer shall knowingly employ a woman in his establishment during the eight weeks before or after the day of her delivery.

No woman worker, according to section 50 shall be issued any notice or order of discharge, dismissal, removal or termination of employment by an employer within a period of six months before and eight weeks after her delivery

Where in any establishment forty or more women workers are ordinarily employed, the employer, according to section 94, shall compulsorily maintain a suitable room or rooms for the use of children under the age of six years of such women.

RESTRICTION EMPLOYMENT OF CHILDREN AND ADOLESCENT

A child as has been defined in clause (Lxiii) of section 2 of the Bangladesh Labour Act, 2006 as follows "'child' means a person who has not completed his fourteenth year of age ;

An adolescent has been defined in clause (viii) of section 2 of the Bangladesh Labour Act, 2006 as follows 'adolescent' means a person who has completed his fourteenth year but has not completed eighteenth year of age ;

Employment of Children is totally prohibited in the labour law. Under Section 34 (1) No child shall be employed or permitted to work in any occupation or establishment. Even according to section 35 certain agreement in respect of children is prohibited. The section says : Subject to the provisions of this Chapter, no person, being the parent or guardian of a child, shall make an agreement, to allow the service of the child to be utilised in any employment.

However certain exception is there in section 44 of the Bangladesh Labour Act, 2006. It is as follows :

Exception in certain cases of employment of children : In section 44 of the Bangladesh labour 2006 it is provided : (1) Notwithstanding anything contained in this Chapter, 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:

Provided that the hours of work of such child, where he is school going, shall be so arranged that they do not interfere with his school attendance.

(2) All provisions applicable to an adolescent workers under this Chapter shall *mutatis-mutandis* apply to such child workers.

PROHIBITION OF EMPLOYMENT OF CHILDREN AND ADOLESCENT

Section 34 of the Bangladesh Labour Act, 2006 prohibits employment of children and adolescent- (1) No child shall be employed or permitted to work in any occupation or establishment.

(2) No adolescent shall be employed or 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.

(3) Nothing in this sub-section (2), shall apply to the employment of any adolescent in any occupation or establishment either as an apprentice or for the purpose or receiving vocational training therein:

(4) The Government may, where it is of opinion that an emergency has arisen and the public interest so requires, by notification in the official Gazette, declare that the provisions of this sub-section (2), shall not be in operation for such period as may be specified in the notification.

Disputes as to age : According to section 36 of the Bangladesh Labour Act, 2006 (1) If any question arises as to whether any person is a child or an adolescent, the question shall, in the absence of a certificate as to the age of such person granted by a registered medical practitioner, be referred by the Inspector for decision to a registered medical practitioner.

(2) A certificate as to age of a person granted by a registered medical practitioner as mentioned in sub-section (1), shall be conclusive evidence as to age of the person to whom it relates.

Certificate of fitness : For employment of adolescent a certificate of fitness is essential. According to section 37- (1) A registered medical practitioner shall, on the application of any adolescent or his parent or guardian or by the employer whether the concerned adolescent is fit to work in any occupation or establishment, examine such person and shall give his decision as to his fitness :

Provided that when such application is made by the adolescent or his parent or guardian, the application shall be accompanied by a document signed by the employer in whose establishment the adolescent is an applicant, stating that such person will be employed if certified to be fit for work.

(2) Any certificate of fitness granted under this section shall remain valid for a period of twelve months from the date on which it was issued. (3) Any fee payable for a certificate under this section shall be paid by the employer and shall not be recoverable from the adolescent or his parents or guardians.

Power to require medical examination : According to section 38- Where an Inspector is of opinion- (a) that any person working in an establishment is an adolescent, but he has no certificate of fitness, or (b) that an adolescent working in an establishment with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the employer a notice requiring that such adolescent shall be examined by a registered medical practitioner and may direct that such adolescent shall not, be allowed to work until he has been so examined and has been granted a certificate of fitness or has been certified by the registered medical practitioner not to be an adolescent.

Restriction of employment of adolescent in certain work : Further restriction of adolescent has been imposed by section 39 of the Act. It reads as follows ; 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.

According to section 40 Employment of adolescent on dangerous machines is also restricted. According to this section- (1) No adolescent shall work at any machine unless-

(a) he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and—

(b) 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,

(2) This provision shall apply to such machines as may be notified by the Government to be of such a dangerous character that an adolescent ought not to work at them unless the requirements of sub-section (1) are complied with.

(3) The Government may from time to time publish in the official gazette the list such of hazardous works where, no adolescent shall be employed.

Working hours for adolescent : According to section 41 of the Bangladesh labour Act, 2006- (1) 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 ;

(2) No adolescent shall be required or allowed to work in any other establishment, for more than seven hours in any day and forty-two hours in any week.

(3) No adolescent shall be required or allowed to work in any establishment between the hours of 7.00 p.m. and 7.00 a.m.

(4) If an adolescent works overtime, the total number of hours worked, including overtime, shall not exceed-

(a) in any factory or mine, thirty six hours in any week ;

(b) in any other establishment, forty eight hours in any week.

(5) The period of work of an adolescent employed in an establishment shall be limited to two shifts which shall not overlap or spread over more than seven and a half hours each.

(6) An adolescent shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Inspector, be changed more frequently than once in a period of thirty days.

(7) The provisions of weekly holiday shall apply also to adolescent workers, and no exemption from the provisions of that section shall be granted in respect of any adolescent.

(8) No adolescent shall be required or allowed to work in more than one establishment in any day.

Underground and under-water work : Section 42 prohibits employment of adolescent in underground and under-water work : According to this section "No adolescent shall be employed in any underground or underwater work.".

Notice of periods of work for adolescent : According to section 43 "(1) In every establishment in which adolescent are employed, there shall be displayed in the manner prescribed by rules, a notice of specified periods of work for adolescent.

(2) The periods shown in the notice under sub-section (1) shall be fixed beforehand in the manner laid down for adult workers and shall be such that adolescent working on those periods would not be working in contravention of this Act.

(3) The relevant provisions laid down for adult workers in the occupation or establishment shall also apply to the notice under sub-section (1). (4) The Government may make rules to prescribe the form of such notice and the manner in which it shall be maintained.

Employment in Dangerous operations : According to section 79 where the Government is satisfied that any operation carried on in an establishment exposes any person employed in it to a serious risk of bodily injury, poisoning, or disease, it may make rules applicable to such establishment or class of establishments in which such operation is carried on- (a) specifying the operation and declaring it to be hazardous; (b) prohibiting or restricting the employment of women, adolescents or children in the operation ; (c) providing for the periodical medical examination of persons employed in the operation and prohibiting the employment of persons not certified as fit for such employment; (d) providing for the protection of all persons employed in the operation or in the vicinity of the places where it is carried on and the use of any specified materials or processes in connection with the operation; and (e) notice specifying use and precautions regarding use of any corrosive chemicals.

DANGEROUS OCCUPATIONS

Under the Bangladesh Labour Act, 2006 the employment of children under 15 years of age is prohibited for cleaning or oiling any moving part of the factory for pressing cotton in which a cotton opener is at work. The Government is further empowered to make rules prohibiting or restricting the workers to serious risk of bodily injury, poisoning or disease.

Persons below 18 years of age may not be employed as stokers or trimmers, except in coastal ships where they may be employed if above 16 years of age.

COMPANIES PROFIT

Application of the Chapter : (1) This Chapter shall apply to all establishments which are companies engaged in industrial undertakings which satisfy any one of the following conditions, namely:-

(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.

(2) The Government may, by notification in the official Gazette, apply this Chapter to such other companies as it may specify therein.

Establishment of Participation Fund and welfare Fund : (1) Every Company to which this Chapter applies shall-

(a) establish a workers' Participation Fund and a workers' Welfare Fund in accordance with this Chapter within one month of the date of which the Chapter becomes applicable to it ; and

(b) pay every to the Participation Fund, and the Welfare Fund, not later than nine months from the close of that year, five percent of its net profits during such year, the proportion of the payment to the Participation Fund and the Welfare Fund being 80:20.

(2) The amount paid to the Funds under sub-section (1) (b) in relation to a year shall be deemed to have been allocated to the Funds on the first day of the next succeeding that year.

Eligibility to benefits : (1) All workers shall be eligible to the benefits of this Chapter and to participate in the Funds.

(2) A worker not competing six months of employment with the company during a year of account shall not participate in the Funds in respect of that year.

DANGEROUS OCCUPATIONS

The Bangladesh Labour Act 2006 prohibits the employment of women for cleaning or oiling any part of moving machinery and in factories where a cotton opener is at work, except under certain specified circumstances. Government may be also make rules restricting the employment of women in operations which expose them to severe risk of bodily injury, poisoning or disease.

CHAPTER-IV

LAW RELATING TO WAGES

OBJECTS OF THE PAYMENT OF WAGES LEGISLATION

The Payment of Wages legislation aims at regulating the payment of wages of certain classes of persons employed in different establishments. i.e. to regulate the payment of wages to certain classes of persons employed in the industry and it provides that employed persons have to be paid their wages in a particular form and at regular intervals and without any unauthorised deductions. It mainly deals with the responsibility for payment of wages, the fixation of wage periods, the time for payment of wages and most important of all deductions which can lawfully be made from the wage payable.

In Halsbury's Laws of England, under the heading "performance of duty as condition precedent to remuneration" there it has been noted that when the contract of employment is an entire contract, providing for payment on the completion of a definite period of service or of a definite piece of work, it was a condition precedent to the recovery of any remuneration in respect of it that the services or duty should be completely performed, unless the employer so altered the contract as to entitle the employee to regard it as at an end, in which case the whole sum payable under the contract became due ; or there was a usage that the employee was entitled to remuneration in proportion to the time actually served or it could be interred from the circumstances that there had been a fresh agreement between the parties that payment should be made for services actually tendered under the original contract had been frustrated.

In Algemene Bank Netherlands, N.V. Vs. Central Government Labour Court, Calcutta, 1977, the High Court of Calcutta held that wages are the payment of services rendered. It is not so much question of whether the contract is divisible or entire but of reciprocal promises as the consideration, that is to say, the employer provides the employment and pays the remuneration and the employee performs the work during the period he is supposed to do the work. Therefore, the right of the employee to get the remuneration depends upon the performance of his work during the period of employment.

WAGES

The term Wages is defined in clause (xlv) of section 2 of the Bangladesh Labour Act, 2006 'wages' means all remuneration, expressed in terms of money or capable of being so expressed, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a worker in respect of his employment or of work done in such employment, and includes any other additional remuneration of the nature aforesaid which would be so payable, but does not include—

(a) the value of any house accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by general or special order of the Government,

(b) any contribution paid by the employer to any pension fund provident fund,

(c) any traveling allowance on the value of any travelling concession,

(d) any sum paid to the worker to defray special expenses entitled on him by the nature of his employment ;

Wages has again a special definition. In section 120 of the Act is has again been defined as follows :

Special definition of 'wages : In this Chapter, unless there is anything repugnant in the subject or context, 'wages, means wages as defined in section 2 (XLV), and includes-

(a) any bonus or other additional remuneration payable under the terms of employment ;

(b) any remuneration payable in respect of overtime work, holiday or leave ;

(c) any remuneration payable under any award or settlement between the parties or under order of any Court ;

(d) any sum payable under this Act or any agreement by reason of termination of employment whether by way of retrenchment, discharge, removal, resignation, retirement, dismissal or otherwise ; and

(e) any sum payable due to lay-off or suspension.

The expression 'wages' covers all the amounts which, on fulfillment of the terms of employment, become payable under the contract of employment or under a statute or an award or decision of court. Its scope is not limited to amounts payable under an express or implied term of the contract of employment *Balaram Abhaji Patil Vs. M C Ragajiwala A I R 1961 Bom 59]*

On an interpretation of the term wages Bambay High Court has held that the term "wages", as defined in this section, means wages actually earned and not potential wages. It means remuneration payable on the fulfillment of the contract. *[Aravind Mills Ltd. Vs. K R Gadgil AIR, 1941. Bom 26].*

The High Court Division of the Supreme Court of Bangladesh held Termination Benefit to be wages. It has been held that form the definition of 'wages' in the Act of 1936 and in the Employment of Labour (Standing Orders) Act of 1965 it is quite clear that termination benefit as provided in section 19 of the Act of 1965 is also 'wages'. *[Managing Director, Contiforms Limited and Peasant Trading Cold Storage (Pvt) Ltd. Vs Member, Labour Appellate Tribunal, Dhaka and others (1998) 50 DLR 476]*

It has been held in *Divisional Superintendent North Western Railway, Lahore Vs. Mohd. Sharif reported in 15 D L R (SC) 261* that from the amplified portion of the definition that some emphasis has been laid down on the expression 'any sum payable to such person by reason of the termination of the employment'. This shows that any sum which is payable by reason of termination of the employment is also wages for the purpose of this Act. Therefore when the service of an employee is terminated without notice, in such case the sum which is payable to him in lieu of notice will be considered as wages.

The employer has a duty cast upon him to pay the wages of employed persons without any deduction whatsoever except those authorised by or under this Act within the specified term after the expiry of the expiry period. If an employer fails to pay any wages or deducts any sum illegally the employed persons can recover the same by filing an application before the Payment of Wages Authority under section 15 of the Payment of wages Act, 1936 Vis-a-vis in case of willful failure an employed person can take recourse to criminal action against the employer.

RESPONSIBILITY FOR PAYMENT OF WAGES

Section 121 of the Bangladesh Labour Act, 2006 lays down the list of persons responsible for the payment of wages to the employed persons. The primary responsibility for the payment of wages under the provisions of this Act is that of the employer. The section is as under :

Responsibility for payment of wages : Every employer shall be responsible for the payment to workers employed by him of all wages required to be paid under this Act:

Provided that, except in the case of a worker employed by a contractor, the chief executive officer, the manager or any other person responsible to the employer for the supervision and control of an establishment shall also be responsible for such payment.

Provided further 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.

In an Indian case it has been held that in the absence of a definition of the word 'employer' in the Act is case of a private limited company the directors are the employers. They are therefore liable to pay wages to workers. In case of industrial establishments where a person is appointed as being responsible to the employer for the supervision and control of the industrial establishment the responsibility to pay wages to the employed persons is that a such person.

A person who is the employer on the date when the application is made will be the person responsible for the payment of wages and not the person who was responsible for payment of wages on the date when the wages accused. Therefore the material date to consider is not who was responsible for payment wages when the wages accrued but who was the person responsible for the payment of wages at the date when the application is made. *In Chirajilal Mody v. Chakravarty, (1963) 1 L.L.J. 725 (Cal).* it has been held that the liability for the payment of wages is the liability of the employer. the responsibility for making such payment on behalf of the employers remains that of the manager so long as one is in office. The manager having been out of the picture the position should be deemed to have been presented against the employer from its very inception.

The purpose of Section 21 of the Act is to pinpoint the responsibility for the payment of wages to employed persons on one particular person in the management and thereby confer burden and liability on such person for the payment of wages and fact the consequences for the failure to do so.

Section 122 of the Bangladesh Labour Act, 2006 cast a responsibility of fixing a wage period for payment of wages to employed persons. The section provides that-

Fixation of wage-periods : (1) Every person responsible for the payment of wages under section 121 shall fix periods, to be called wage periods, in respect of which such wages shall be payable. (2) No wage period shall exceed one month.

Section 123 Bangladesh Labour Act, 2006 deals with the time of payment of wages. It provides that - (1) The wages of every worker shall be paid before the expiry of the seventh day after the last day of the wage period in respect of which the wages are payable. (2) Where the employment of any worker is terminated by retirement or by the employer, whether by way of retrenchment, discharge, removal, dismissal or otherwise, the wages payable to him shall be paid before the expiry of the seventh working day from the day on which his employment is so terminated. (3) All payment of wages shall be made on a working day.

Section 124 provides that all wages shall be paid in current coin or currency notes or in bank cheque.

TIME LIMIT WITHIN WHICH THE WAGES IS TO BE PAID BY THE EMPLOYER

Section 123 of the Bangladesh Labour Act, 2006 deals with the question relating to time of payment of wages. This section provides that- (1) The wages of every worker shall be paid before the expiry of the seventh working day after the last day of the wage period in respect of which the wages are payable.

(2) Where the employment of any worker is terminated by retirement or by the employer, whether by way of retrenchment, discharge, removal, dismissal or otherwise, the wages payable to him shall be paid before the expiry of the seventh working day from the day on which his employment is so terminated.

(3) All payment of wages shall be made on a working day.

Contrary to the provisions of sub-section (3) with regard to final payment of a worker due to termination of employment provision has been made in section 30 of the Bangladesh Labour Act, 2006 for payment within 30 working days. The sections reads as follows :

Time limit of final payment of worker : It is special provision for payment of service benefit and other dues after cessation of employment. Where the employment of a worker has been ceased due to a retirement, discharge, retrenchment, dismissal and termination etc. all amounts due to him shall be paid within maximum thirty working days by the employer."

DEDUCTIONS WHICH MAY BE MADE FROM WAGES

An employer cannot make any deductions except those expressly mentioned is section 125 of the Bangladesh Labour Act, 2006 from the wages payable to an employee on account of his employment. For the satisfaction of the claims that an employer might have against the employee on account of other transactions, make outside the scope his employment, he can bring a civil suit but he cannot touch the wages. This is a restriction of the general law for the benefit of the employee who is presumed to be less advantageously placed. *[Manager, Hindustan Journals Pvt. Ltd., Indore V. Govind Ram Swami Ram of Indore AIR 1963 MP 25]*

Section 125 of the Bangladesh Labour Act, 2006 deals with the deductions which may be made from wages. The section is as follows : (1) No deduction shall be made from the wages of a worker except those authorised by or under this Act.

(2) Deductions from the wages of a worker shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely- (a) fines imposed under section 25 ; (b) deductions for absence from duty ; (c) deductions for damage to or loss of goods expressly entrusted to the worker for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default ; (d) deductions for house-accommodation supplied by the employer ; (e) deductions for such amenities and services, other than tolls and raw materials required for the purpose of employment, supplied by the employer as the Government may, by general or special order, authorise ;

(f) deductions for recovery of advances or loans of whatever nature or adjustment of over-payments of wages ;

(g) deductions of income-tax payable by the worker ;

(h) deductions required to be made by order of a Court or other authority competent to make such order ;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies or any other recognised provident fund as define in the Income-tax Ordinance, 1984 (XXXVI of 1984), or any provident fund approved in this behalf by the Government, during the continuance of such approval ;

(j) deductions for payments to any co-operative societies approved by the Government or to a scheme of insurance maintained by any Government Insurance Company or Bangladesh Postal Department;

(k) deductions, made with the written authorisation of the workers for the contribution to any fund or scheme constituted or framed by the employer, with the approval of the Government, for the welfare of the workers or the members of their families or both. and

(l) deduction of subscription for the CBA union through check-off system.

Employed persons an recover any claim which has been deducted illegally from his wages. It has been held by an Indian High Court that - the deductions specified in the section are permitted or authorised to be made, and in respect of the deductions so permitted or authorised to be made there can be no claim under section 132. In other words, claims for recovery of wages can be validly made under section 132 and can be awarded only where it is shown that the impugned deduction is not authorised or justified by section 125. *[Ganeshi Ram Vs. District Magistrate, Jodhpur (1961) 2 LLJ 690].*

PROVISIONS FOR FINE

Section 25 of the Bangladesh Labour Act, 2006 makes Special provisions relating to fine. It reads as under : (1) No fine exceeding one-tenth of the wages payable to a worker in respect of a wage-period may be imposed in any one wage-period on any worker.

(2) No fine shall be imposed on a worker who is under the age of fifteen years.

(3) No fine imposed on any worker shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.

(4) Every fine shall be deemed to have been imposed or the day of the commission of the offence in respect of which it was imposed.

(5) All fines and all realisations thereof shall be recorded in a prescribed register to be kept by the employer and all such realisations shall be spended only to such purposes beneficial to the workers employed in the establishment.

REMEDY FOR THE PERSONS EMPLOYED UNDER THE PAYMENT OF WAGES ACT IN THE EVENT OF DEDUCTION FROM WAGES OR DELAYED PAYMENT OF WAGES

Section 132 of the Bangladesh Labour Act, 2006 lays down provisions for claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.

Claims arising out of deductions from wages or delay in payment of wages : (1) Where contrary to the provisions of this Act any deduction has been made from the wages of a worker, or any payment of wages has been delayed, or payment of wages or gratuity under any rule or his dues in the provident fund delayed, such person himself, or in case of his death any of his legal heirs or any legal representative, may apply to the Labour Court for recovery of such unpaid wages or delayed wages or any other dues;

(2) Every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be, to the Labour Court within whose jurisdiction on the place where the payment was made :

Provided that, any application may be admitted after the said period of twelve months when the applicant satisfies the Labour Court that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (1) is entertained, the Labour Court shall hear the applicant and the employer or other person responsible for the payment of wages under this chapter, or give them an opportunity of being heard and take necessary evidence , and, may, direct the refund to the applicant of the amount deducted, or the payment of the delayed wages.

(4) Any order given under sub-section (3) shall not prejudice any other penalty to which such employer or other person is liable under this Act.

(5) Labour Court in passing an order under sub-section (3) may direct the employer or other person responsible for payment of wages to pay twenty-five per cent of the wages of the worker as compensation.

(6) No direction for the payment of compensation under sub-section (5) shall be made in the case of delayed wages if the Labour Court is satisfied that the delay was due to- (a) a bonafide error or bonafide dispute as to the amount payable to the worker, or (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or (c) the failure of the worker to apply for or accept payment.

(7) if the Labour Court while hearing any application under this section is satisfied that it was either malicious or vexatious, the Labour Court may direct that a penalty not exceeding two-hundred Taka be paid to the employer or other person responsible for the payment of wages by the person presenting the application"

MALICIOUS OR VEXATIOUS CLAIMS

Sub-section (7) of Section 132 of the Bangladesh Labour Act, 2006 further provides that. if the Labour Court while hearing any application under this section is satisfied that it was either malicious or vexatious, the Labour Court may direct that a penalty not exceeding two-hundred Taka be paid to the employer or other person responsible for the payment of wages by the person presenting the application

The term "wages", as defined in this section, means wages actually earned and not potential wages. It means remuneration payable on the fulfillment of the contract. *[Aravind Mills Ltd. Vs. K R Gadgil AIR, 1941. Bom 26]* and as such claims can only be made for wages actually earned. In Shri Ambica Mills Co. Ltd. vs. S.B. Bhatt, (1961--ILLJ I SC), the Supreme Court, after examining the scheme of the Act held that the only claims which could be entertained by the authority were claims arising out of deductions or delay made in the payment of wages. Where the contract of employment is admitted but there is a dispute about the construction of its terms, the authority would have jurisdiction to try such a dispute.

WHETHER GROUP APPLICATION MAY BE MADE

Workers of the same unpaid group may make application to the labour court collectively. Section 134 of the Bangladesh Labour Act, 2006 authorises the employed persons belonging to the same unpaid group, i.e. the persons of whom the wages for the same wage-period or periods have remained unpaid, to prefer their claims by a single application. The Labour Court is also authorised by this section to consolidate the applications of the employed persons belonging to the same and try he cases as a single application as if it has been made by individual worker.

Section 134 provides that (1) A single application may be presented under section 132 on behalf or in respect of any number of workers belonging to the same unpaid group whose wages have been delayed or deducted, and in such case compensation that may be awarded under section 132(5),

(2) The Labour Court may deal with any number of separate pending applications, presented under section 132 in respect of workers belonging to the same unpaid group, as a single application presented under sub-section (1), and the provisions of that sub-section shall apply accordingly.

(3) For the purpose of this section, 'unpaid workers includes in the same group' shall mean the workers who t are borne on the same establishment and if their wages for the same wage-period or period have remained unpaid.

In a case reported in *A.I.R. 1952, Mad. 808* it has been held that a single application may be field on behalf of a number of employees belonging the same group who are unpaid

According to the principle laid down in a Kerala case Section 132 enumerates the persons entitled to bring in an application under that section and section 134 provides for joinder of application. In view of the provision of section 134 when a joint application in respect of several workmen is brought by the workmen themselves, all of them must join it. However that section does not require all of them to sign or verify the application *[F.mely Deecruz Vs. Chief Administrative Office (1968) Lab I C 831 Ker.]*

HISTORY OF MINIMUM WAGES LEGISLATION

The Royal Commission on labour noticed the chronic problem of payment of inadequate wages to workers and recommended on this issue for setting up wage board for fixing minimum wages. The Commission particularly gave emphasis on fixation of minimum wages for the workers employed in plantations of Assam. Government of the then India appointed the Labour Investigation Committee in 1944 which commented on the low level of wages of workers in various industries. In 1946 Dr. Amberker, an erstwhile labour member in the Government of India introduced a Minimum Wages Bill in the Legislative Assembly. The bill was referred to the Select Committee in March 1947, but the law could not be passed during the British Regime. On 28th September, 1957 the Minimum wages Act was passes as a provincial Act in the then East Pakistan Parliament. The Act was published in the official gazette on 8th November of that. year.

The Minimum Wages Act, 1957 was made applicable only to the scheduled industries and undertakings viz., (1) Inland Water Transport, (2) Textiles (Cotton, Wool, Artificial Silk and Jute), (3) Sugar, (4) Matches, (5) Paper, (6) Rubber Manufacturers and (7) Tea.

The above Act was repealed in 1961 and in its place the Minimum Wages Ordinance, 1961 was enacted. All industrial undertakings for which no adequate machinery exists for effective regulation of wages were brought under the Ordinance.

After liberation of Bangladesh the Minimum Wages Ordinance, 1961 remained in force. In 1988 some amendments has been made in this Ordinance. By this amendment besides changing of some words section 10 relating to taking of cognizance of the offence was substituted. A labour court has been exclusively empowered to take cognizance and try offences under the ordinance. Person aggrieved by the commission of the offence has also been empowered by the amending Act to lodge prosecution against the person who has allegedly committed and offence. In 1992 a commission named 'Labour Law Commission' was formed to consolidate various labour laws and pursuant to the recommendation of the Commission Bangladesh Labour Act, 2006 was passed wherein most the provisions of the Minimum Wages Ordinance, 1961 have been incorporated.

OBJECT OF FIXATION OF MINIMUM WAGES

The object for enactment on payment of Minimum Wages was fixation of minimum rates of wages in certain employments The enactment was clearly directed against exploitation of the ignorant, less organised and less privileged members of the society. On fixation of minimum wages Indian Supreme Court held that the object of the Act is to prevent economic exploitation of the workers. It is intended to apply the Act to those industries or localities in which by reason of causes such as unorganised labour or absence of adequate machinery for

regulation of wages, the wages paid to workers were, in the light of the general level of wages and subsistence level, inadequate *[Bhikusa Yamasa Kshatriya Vs. Union of India A I R 1963 806]*

ESTABLISHMENT OF MINIMUM WAGES BOARD

The Minimum Wages Board is established under section 138 of the Bangladesh Labour Act, 2006 which provides that- (1) The Government shall establish a Board to be called the Minimum Wages Board.

(2) the Minimum Wages Board, hereinafter referred to in this Chapter as the Wages Board, shall consist of- (a) a Chairman ; (b) one independent member ; (c) one member to represent the employers, and (d) one member to represent the workers.

(3) For the purpose of discharging the functions specified in section 139, the Wages Board shall also include- (a) one member to represent the employers of the industry concerned ; and (b) one member to represent the workers engaged in such industry.

(4) The Chairman and the other members of the Wages Board shall be appointed by the Government.

(5) 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.

(6) The member to represent the employers and the member to represent the workers under sub-section (2) or (3) shall be appointed after considering nominations, if any, of such organisations as the Government considers to be representative organisations of such employers and workers respectively.

Provided that, if no nomination is received for the representatives of the employers or workers inspite 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.

RECOMMENDATION OF MINIMUM RATES OF WAGES FOR WORKERS WITH RESPECT TO PARTICULAR INDUSTRIES

Recommendation of minimum rates of wages for workers with respect to particular industries is provided in section 139 of the Bangladesh Labour Act, 2006. According to the section - (1) Where, in respect of any industry, the Government is of the opinion that, in view of the prevailing rates of wages of workers engaged in that industry, it is reasonable and necessary to fix the minimum rates of wages for all or any class of workers employed in such industry, it may direct the Wages Board to recommend, after such enquiry as the Wages Board thinks fit, the minimum rates of wages for such workers or class of workers.

Explanation .- The Government, may upon an application made to it, by the employer or workers, or both the parties, consider fixation of minimum rates of wages for the workers employed in that industry.

(2) The Wages Board shall make its recommendation within a period of six months from the date of receipt of such direction made to it :

Provided that the Government may extend this period if the Wages Board so requests.

(3) In pursuance of a direction under sub-section (1), the Wages Board may recommend minimum rates of wages for all classes of workers in any grade and, in such recommendation, may specify- (a) the minimum rates of wages for time-work and piece-work ; and (b) the minimum time-rates specifically for the workers employed on piece work.

(4) The time-rates recommended by the Wages Board may be on hourly, daily, weekly or monthly basis.

(5) In its recommendation the Wages Board shall indicate whether the minimum rates of wages should be adopted uniformly throughout the country or with such local variations for such areas as are specified therein.

(6) The minimum rates of wages for any industry may be re-fixed after every five years as may be directed by the Government.

PROHIBITION TO PAY WAGES AT A RATE BELOW THE MINIMUM RATE OF WAGES AND PENAL ACTION FOR CONTRAVENTION OF THE PROVISION

When any minimum rates of wages is declared for any particular type of industry the employers must pay the minimum and cannot pay less than the declared rate. Section 148 of the Bangladesh Labour Act, 2006 provides that payment of Minimum Wages is binding on all employers. It is provided in the section that the minimum rates of wages declared under section 140 or published under section 145 shall be binding on all employers concerned and every worker shall be entitled to be paid wages at a rate which shall, in no case, be less than the rate of wages so declared or published.

Section 149 of the Act further prohibits payment of wages at a rate below the minimum rate of wages. According to this section- (1) No employer shall pay any worker wages at a rate lower than the rate declared or published under this Chapter to be the minimum rate of wages for such worker.

(2) Nothing in sub-section (1) shall be deemed to affect, in any way, the right of a worker to continue to receive wages at a rate higher than the minimum rate declared under this Chapter, if, under any agreement or award or otherwise, he is entitled to receive wages at such higher rate, or to continue to enjoy such amenities and other advantages as are customary for such worker to enjoy.

Payment by any employer at a rate lower than the rate declared as minimum is a punishable offence. Section 299 f the Bangladesh Labour Act, 2006 provides penalty for payment or wages at a rate below the minimum rate of wages: The section reads as follows : (1) Any

employer who pays any worker wages at a rate lower than the rate declared under Chapter XI to be the minimum rate of wages 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.

(2) Where the Court imposes penalty under sub-section (1), while passing judgment, order that the employer shall also pay to the worker concerned such sum to represent the differences between the amount actually paid to such worker and the amount which would have been paid to him had there been no such contravention.

CHAPTER-V

LAW RELATING TO COMPENSATION

WORKMEN'S COMPENSATION

It is the provision of the labour law that when any worker meets any accident in course of his employment the Employer is bound to pay him some compensation. If a worker dies due to the accident his dependents (not heirs) are entitled to get compensation.

OBJECTS OF WORKMEN'S COMPENSATION

Provision for Workmen's Compensation in the Act is a social legislation provision. It is a type of insurance. The object was to reduce the number of accidents to workmen by increasing the importance for the employer of adequate safety devices, for protection of workers as far as possible, from hardship arising from accidents .giving compensation to workers who met accident in course of his employment

The general principle is that compensation should ordinarily be given to workmen who sustained personal injuries by accidents arising out of and in the course of their employment. Compensation will also be given in certain limited circumstances for disease.

The Workmen's Compensation entitles an employee who is injured by an accident arising out of and in the course of employment and disabled for at least a week, to recover a sum as compensation. The employee's contributory negligence is no defence to the employer unless it amounts to serious and willful-misconduct, and not even then if the injury is permanent or fatal.

Before enactment of the Bangladesh Labour Act,2006 the provision for workmen's compensation was embodied in the Workmen's Compensation Act, 1923 which is virtually reproduced in the Bangladesh Labour Act,2006 *In Works Manager, Carriage and Wagons shop, Eastern Indian Railway Vs. Mohabir 1954 AIR 132 it has been held that* "The Workmen's Compensation Act has created a new type of liability inasmuch as it makes an employer liable to pay compensation at a fixed rate to a servant incapacitated by an accident arising out of and in the course of employment. The liability to pay compensation is independent of any neglect or wrongful act on the part of the master or his servant. In other words, it is not a liability which arises out of tort. It is a liability which springs out of the relationship of master and servant. The total amount that a servant can get is fixed by the Act, is governed by a scale and is dependent not on the suffering caused to the workman or the expenses incurred by him in his illness but on the difference between his wage-earning capacity before and after the accident. The accident must have relation to the servant's employment. This would include not only the period when he is doing the work actually allotted to him but also the time when he is at a place where he would not be but for his employment.

ACCIDENT

The term *"accident"* for the purpose of the law relating to compensation for personal injuries sustained by workman and the employer's liability in that behalf, includes any injury which is not designed by the workman himself, and it is of no consequence that the injury was designed and intended by the person inflicting the same. *In Trim Joint District School Board vs. Kelly (1914 A.C. 667)* case where an assistant master of an industrial school was assaulted and killed by two of the pupils while the assistant master was performing his duties, held that his death was caused by an accident for the purpose of the Workmen's Compensation Act, 1906.

"Accident" would vary according as the context varies and as instances mentioned criminal jurisprudence where crime and accident are sharply divided by the presence or absence of *mens rea* and the law of marine insurance where the maxim *"In jure non remota causa sed promima specatur"* (in law the proximate, and not the remote, cause is to be regarded) applies.

It is the duty of the employer to notify the authorities of the accident as an when occurs in his establishment.

Section 80 of the Bangladesh Labour Act 2006 provides as follows: "Notice to be given of accidents : (1) When any accident occurs in an establishment causing loss of life or bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water or fumes occurs in an establishment, the employer of the establishment shall give notice of the occurrence to the Inspector within two working days.

(2) Where an accident mentioned in sub-section (1) causes bodily injury resulting in the compulsory absence from work of the person injured for a period exceeding forty-eight hours it shall be entered in a register in the prescribed form.

(3) A copy of the entries in the register referred to in sub-section (2) shall be sent by the employer of the establishment, within fifteen days after the 30th day of June and the 31st day of December in each year, to the Chief Inspector.

Notice of certain dangerous occurrences is provided in section 81 of the Bangladesh Labour Act, 2006 as follows "Where in an establishment, any dangerous occurrence of such nature as may be prescribed, occurs, whether causing any bodily injury or not, the employer of the establishment shall send notice thereof to the Inspector within three working days."

DEPENDENT

Under clause (xxx) of Section 2 of the Bangladesh Labour Act, 2006 the term *'dependant'*, in relation to a deceased worker, means any of the following relatives, namely:

(a) a widow, minor child, unmarried daughter, or a widowed mother; and

(b) if wholly or partly dependant on the earnings of the worker at the time of his death, a widower, father or widowed mother, a daughter if unmarried or minor or widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, a minor child of a deceased daughter where no father of the child is alive or,

where no parent of the worker is alive, a paternal grandparent and illegitimate son or illegitimate unmarried daughter ;

The following relatives of a deceased workman cannot claim compensation by merely proving the specified relationship. They have to prove that they were wholly or in part dependent on the earnings of the workman at the time of his death: (1) A widower, (2) A parent other than a widowed mother, (3) A minor illegitimate son, (4) An unmarried illegitimate daughter, (5) A daughter legitimate or illegitimate if married and a minor or if widowed, (6) A minor brother, (7) An unmarried or widowed sister, (8) A widowed daughter-in-law, (9) A minor child of a deceased son, (10) A minor son of a deceased daughter, (11) Where no parent of the child is alive or where the parent of the workman is alive, a paternal grand-parent.

In *Kaveri Structurals Ltd. Vs. Smt. Bhagyam, 1978-* I.L.L.N.(463) case it has been held that where the dependent, died even without having made a claim before the Commissioner, the right of the dependant passed to his or her executor. The legal basis for this position is that the right remained vested in the dependant to the time of his or her death and upon death passed to his or her heirs or legal representatives.

PARTIAL DISABLEMENT

Under clause (ia) of section 2 of the Bangladesh Labour Act, 2006, the term *'partial disablement'* means, where the disablement is of temporary nature, such disablement as reduces the earning capacity of a worker in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

Provided that every injury specified in the First Schedule shall be deemed to result in permanent partial disablement ;

Test of partial disablement : While assessing the compensation in the case of a permanent partial disablement what the Court has got to see in the fact as to whether the earning capacity of the workman has been reduced in every employment which he was capable of undertaking at the time of accident and not merely the particular employment in which he was engaged at the time of accident resulting in the disablement. Consequently it is not enough if a blacksmith fitter is disabled to perform his duties of a blacksmith fitter with hand by the loss of the index and middle fingers, the Court should take into consideration as to whether he has been incapacitated from undertaking any other employment and whether in that employment the rest of the hand, namely the thumb and other two fingers can be utilised. *[Upper Doab Sugar Mills Ltd. Vs. Daulat Ram, A I R 1936 All. 493= 1936 A.L.J. 701.]*

TOTAL DISABLEMENT

Section 2 (Lxvii) of the Bangladesh Labour Act, 2006 defines total disablement as follows : 'total disablement' means such disablement, whether of a temporary or

permanent nature, as incapacitates a worker for all work which he was capable of performing at the time of the accident resulting in such disablement ;

Provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in the First Schedule where the aggregate percentage of the loss of earning capacity as specified in that Schedule against those injuries, amounts to one hundred per cent ;

A total disablement means a disablement which incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement. The disablement must be of such a character that the person concerned is unable to do any work and not only the duties of the post which he was doing on the date of the accident. The works for all work which he was capable of performing at the time of accident in the clause should not be read as "for the work which he was performing at the time of accident". *[General Manager, G.I.P. Rly. Vs. Shankar, A I R 1950 Nag. 201 = 2 F.J.R. 127].* A total disablement may be either temporary or permanent total disablement is deemed to result from—(i) the permanent total loss of the sight of both eyes ; or (ii) from any combination of injuries specified in Schedule I if the aggregate percentage of the loss of earning capacity as specified in that schedule amounts to at least one hundred per cent. In Ball Vs. William Hunt and Sons. [1912 A.C. 496] Earl Loreburn L.C. pointed out the Distinction between in capacity for work and 'incapacity to work' and stated: "there is incapacity for work when a man has a physical defect which makes his labour unsaleable in any market reasonably accessible to him".

In the case of *All-India Construction Co. Vs. Munshi Ram [A I R 1931 Lah. 319= 134 I.C. 290]* where a crane driver in the construction of a bridge across the Indus lost two-thirds of the index and middle fingers of his right hand and the whole of the third and fourth fingers of the same hand but his thumb and hand were however left intact, it was held that as the loss of his earning capacity was at the most 25 per cent, there was no permanent disablement.

EMPLOYER'S LIABILITY FOR COMPENSATION AS PROVIDED IN THE BANGLADESH LABOUR ACT, 2006.

The provision for compensation has created a new type of liability inasmuch as it makes an employer liable to pay compensation at a fixed rate to a servant incapacitated by an accident arising out and in the course of employment. The liability to pay compensation is independent of any neglect or wrongful act on the part of the master or his servant. (A.I.R. 1953 All. 132.).

Section 150 of the Bangladesh Labour Act, 2006 deals with the employer's liability for compensation to workmen. This section provides that- (1) If personal 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 in accordance with the provisions of this Chapter. *(i.e. Chapter XII of the Bangladesh Labour Act, 2006.)*

In Dalchand Vs. Power Plant and Industrial equipment Co. 1954 (MPWN 22) it has been held that in Computation of local employments- Overtime Payment and bonus are also to be included for the purpose of claim under this section.

However, according to sub-section (2) an employer shall not be liable for compensation in respect of-

(a) in respect of any injury which does not result in the total or partial disablement of the worker for a period exceeding three days ;

(b) 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.

Sub-section (3) provides that If - (a) worker employed in any employment specified in part-A of the Third Schedule, attacked with any disease specified therein as an occupational disease peculiar to that of employment, or (b) 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 Part-B of the Third Schedule, 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.

Sub-section (4) provides that the Government may, by notification in the official Gazette, add any description of employment to the employment's specified in the Third Schedule and shall specify in the case of the employment's so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to these employment's respectively. But according to sub-section (5) 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.

According to sub-section (6) and (7) No right to compensation on a worker will be conferred in respect of any injury if he has instituted in a Civil Court a suit for damages 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 one case, Indian Supreme Court observed that, there must be casual connection between the death of workman and his employment. If the workman dies as a natural result of the disease from which he was suffering from a particular disease as a result of wear and tear of his employment, no liability would be fixed upon the employer. But if the employment is a contributory a cause or has accelerated the death or if the death was due not only to the disease but the disease coupled with the employment than it could be said that the death arose out of the employment and the employer would be liable. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under circumstances which can be said to be accidental, his death results from injury by accident. (1969-II LLJ 812 SC).

In another case, it has been held that acceleration or aggravation of an employee's heart condition, thereby causing death or disability may constitute a compensable injury within the meaning of the Act. The sudden manifestation of heart conditions from the affect of strain or over-exertion at work constitutes an accidental injury within the meaning of the Act. In all cases, it must be determined whether the real cause if the disease or the hazard of the employment. (1976-II L.L.J. 12 Mad.).

In Marium Bee v. Town and Country Development Authority, 1984 J.L.J. 53, 1984 M. P.L. J.120) Cases which discussing the "Cause of death" it may observed on the death of cardiac attach- mental tension caused by employer-death is as a result of his employment.

IN THE COURSE OF EMPLOYMENT

This phrase has been clearly explained in *Saurashtra Salt Manufacturing Company v. Bai Valu Raja (A.I.R. 1958 S.C. 881).* The Supreme Court, in this case, observed as under: "As a rule, the employment of workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension is both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension."

It is well-settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there is the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him.

Where an employee was knocked down and killed by a train while returning from duty. In earlier case it was held that the accident arose out of and in the course of employment. (AIR 1651 Cal. 501).

In a case it was held that where a workman was standing near the gate five minutes before the start of shift if he was knocked down fatally by a vehicle, 10 or 15 feet away from the gate, when he was trying to got access to the mill so that he could attend the second shift ; starting at 8.30 P.M. it is obvious that there was sufficient proximity both in time and place with his employment. It was only an ordinary incident of his employment that he had, at the fatal hour, come clearly within the theory of national extension. (1977.II L.L.J. 194 Gujarat).

PROCEDURE TO BE FOLLOWED BY THE LABOUR COURT FOR DISTRIBUTION OF COMPENSATION

Procedure for Distribution of compensation is laid down in section 155 of the Bangladesh Labour Act, 2006. Main provisions of this section are as follows : (1) No payment of compensation in respect of a worker whose injury has resulted in death, and no payment of a lump sum as compensation to a person under a legal disability, shall be made otherwise than by deposit with Labour Court.

(2) No such payment made directly by an employer shall be deemed to be a payment of compensation, unless a worker, during the periods of his employment, nominated in the prescribed manner any of his dependents to receive the amount of compensation in the even of an injury resulting in his death:

(3) In the case of a deceased worker, an employer may make to any dependent advances on account of compensation and such advances shall be deducted by the Labour Court from the compensation payable to that dependent and repaid to the employer.

(4) Any other sum which is payable as compensation may be deposited with the Labour Court on behalf of the person entitled thereto.

(5) The receipt of the Labour Court shall be a sufficient discharge in respect of any compensation deposited with it.

(6) On the deposit of any money under sub-section (1) as compensation in respect of a deceased worker, the Labour Court shall, if it thinks necessary, cause notice to be published or to be serviced on each dependent in such manner as it thinks, fit, calling upon the dependents to appear before it on such date as it may fix for determining the distribution of the compensation.

(7) If the Labour Court is satisfied after any enquiry, that no dependant exists, it shall not less than two years after the date of deposit, transfer the balance of the money to such fund or funds for the .benefit of workers as the Government may, by notification in the Official Gazette, specify or establish.

(8) The Labour Court shall, on application by the employer, furnish a statement showing in detailed all disbursements made.

(9) Compensation deposited in respect of a deceased worker shall, be apportioned among the dependents of the deceased worker or any of them in such proportion as the Labour Court thinks fit.

(10) Where any compensation deposited with the Labour Court is payable to any person, the Labour Court shall, pay the money to the person entitled thereto.

(11) Where any lump sum deposited with the Labour Court is payable to a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of such person during his disability, in such manner as the Labour Court may direct.'

(12) Where a half monthly payment is payable to any person under a legal disability the Labour Court may, order that the payment be made during the disability to any dependant of

the worker or to any other person whom the Labour Court thinks best fitted to provide for the welfare of the worker.

(13) Where, on application made to it in this behalf or otherwise, the Labour Court is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or for any other sufficient cause, an order of the Labour Court as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Labour Court may make such order for the variation of the former order as it thinks just in the circumstances of the case:

(14) Where the Labour Court varies any order by reason of the fat that payment of compensation to any person has been obtained by fraud, impersonation or other improper mans, any amount so paid to or on behalf of such person may be recovered.

RESTRICTION IMPOSED BY THE PROVISIONS OF WORKMEN'S COMPENSATION RELATING TO THE ASSIGNMENT, CHARGE AND ATTACHMENT OF THE COMPENSATION AMOUNT

Section 156 of the Bangladesh Labour Act,2006 provides for the compensation not to be assigned, attached or charged. This section lays down that no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation law, nor shall any claim be set off against the same.

STEPS A WORKMAN SHOULD TAKE WHEN HE IS INJURED IN AN ACCIDENT ARISING OUT AND IN THE COURSE OF EMPLOYMENT IN ORDER TO GET COMPENSATION FROM HIS EMPLOYER

Section 151 of the Bangladesh Labour Act provides that (1) No claim for compensation shall be entertained by a Labour Court unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before it within two years of the occurrence of the accident or in case of death, within two years from the date of death.

(2) Where the accident is the contracting of a disease in respect of which the provisions of section 150 (3) are applicable, the accident shall be deemed to have occurred on the first of the days during which the worker was continuously absent from work in consequence of the disablement caused by the disease.

(3) The want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim- (a) if the claim is preferred in respect of the death of a worker resulting from an accident -(i) which occurred on the premises of the employer, or (ii) at any place where the worker at the time of the accident was working under the control of the employer or of any person employed by him, and the worker died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or (b) if the employer of any one of several employers of

any person responsible to the employer for the management of any branch of the trade or business in which the injured worker was employed had knowledge of the accident from any other source at or about the time when it occurred.

Section 168 provides that no application for the settlement of any matter by a Labour Court under this Chapter, other than an application by a dependant for compensation, shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

Section 172 of the Act lays down that an appeal shall lie to the High Court from the orders of a Commissioner. The period of limitation for an appeal shall be 60 days. Appeal will lie on substantial question of law. The provisions of section 5 of the Limitation Act, 1908, shall be applicable to appeals under this section.

PROVISIONS FOR REGISTRATION OF AN AGREEMENT UNDER THE BANGLADESH LABOUR ACT, 2006

Section 170 of the Bangladesh Labour Act, 2006 provides that where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a monthly payment or otherwise, whether by way of redemption of a monthly payment or otherwise, or where any compensation has been so settled as being payable to a person under a legal disability a memorandum thereof shall be sent by the employer to the Labour Court, which shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner; But (a) no such memorandum shall be recorded before seven days after communication by the Labour Court of notice to the parties concerned ; (b) the Labour Court may at any time rectify the register ; (c) where it appears to the Labour Court that an agreement as to the payment of a lump sum whether by way of redemption of a monthly payment or otherwise, or an agreement as the amount of compensation payable to a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means,

EFFECT OF FAILURE TO REGISTER AN AGREEMENT

The effect of failure to register an agreement has been dealt with in Section 171 of the Bangladesh Labour, Act, 2006. This section provides that where a memorandum of any agreement the registration of which is required by section 170, is not sent to the Labour Court as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Chapter, and shall not, unless the Labour Court otherwise directs, be entitled to deduct more than half of any amount paid to the worker by way of compensation whether under the agreement or otherwise.

DEFECT OR IRREGULARITY IN A NOTICE BEFORE THE COMPENSATION COMMISSIONER UNDER THE WORKMEN'S COMPENSATION ACT, 1923

Sub-section (1) of Section 10 of the Workmen's Compensation Act, 1923 speaks of notice of accident as also the preferring of claim. As the statute itself fixes the amount of compensation payable, the notice of accident in sub-section (1) of Section 10 of the Act would mean the

notice of the details of he accident and it may not be necessary to set out the details of any ascertained amount of claim. The word "claim" used in Section 10(1) of the Act cam up for consideration in Central Engineering Corporation v. Doral Raj (A.I.R. 1960 Original 39) and his Lordship observed that the world 'claim' used in Section 10 (1) of the Act cam up for consideration in Central Engineering Corporation v. Doral Raj (A.I.R.1960 Original 39) and his Lordship observed that the world 'claim' referred to in Section 22 and 10(1) does not refer to a claim made on the employers but denotes a formal claim made before the Commissioner.

In view of the above, the want of or, any defect or irregularity in a notice shall not be a bar to the entertainment of a claim and the proviso to Clause (b) of Section 10 (1) of the Workmen's Compensation Act, 1923 gives jurisdiction to the Commissioner to entertain and decide any claim to compensation in any case notwithstanding that notice has not been given.

PROBLEMS AND SOLUTIONS

1. A collier along with either colliers, had to pass through a railway platform in order to reach the colliery in which he worked. Form the platform, the colliers had to walk by a high road to the colliery which was about a quarter of mile from the platform. A train conveyed the colliers from the platform to Dowslais which was the place of residence of collier. They were conveyed free charge. The collier was waiting on the platform to get into the return train, when he was knocked down by the train, and killed. State whether the widow of he collier in entitled for compensation under the workmen's Compensation Act.

Solution : The widow's application for compensation was allowed. By and large, a workman is not entitled to compensation in these cases were the accident occurs in a public place and the risk faced by him is not on account of his employment as such, but on account of his presence on the spot as a member of the public. The underlying reason for this appears to be that at such spot, the employer has no control over the employee and cannot regulate his movement It is true that an employee has to reach his usual place of duty every day at a fixed hour for that, as a normal human being he would adopt the easiest and most comfortable route so that he may conveniently reach his destination in proper time. He may, in case of two equally convenient routes, adopt any one of them. Human nature being what is, some would reach fairly in advance of the hour of duty, the others, less punctilious, may reach at the nick of time. Therefore, there is always room for individual vagaries. This is probably the backbone of the principle on which the dictum of no liability for accident at public places, appears to be founded. But exception to this general rule can be created in which an employee's passage even through a public place or highway becomes subject to regulation or control by his employer The facts of the instant case furnish such an exception. From the perusal of the facts of his case, it appears that the workmen were excepted to travel to and from the colliery by the trains and in the carriages provided for them by the employers, and that it was intended by both parties that this should be part of the contract of employment. In view of this, the compensation allowed to the widow is fully justified.

In St. Helens Colliery Company Ltd. v. Hewitson (1924 A.C. 59) it was observed that there may be cases in which the facility provided by the employer for journey to and from the place of work may be justly regarded as one of the incidents of the employment. In this case it was also observed that in all cases where a workman on going to, or on leading his work suffers an accident on the way, the first question to be determined is whether the workman was at the place where the accident occurred in virtue of his status as a workman or in virtue if his status as a member of the public.

The Supreme Court of India in General Manager B.E.S. T. Undertaking Bombay v. Mrs. Agnes (A. I.R. 1964 S.C. 193), the drivers of B.E.S.T. Undertaking were given free transport facility in buses belonging to the undertaking from the depot to their houses and vice versa. The driver concerned met with an accident while going home from the depot. It was held that

the accident had occurred during the course of the employment and had arisen out of the employment. Subba Rao.J., summed up the crucial point in the case when he observed that as the free transport is provided to the bus driver in the interest of service having regard to the long distance a driver has to traverse to go to the depot from his house and vice versa, she user of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as a part of his duty.

2. Munim, a permanent worker, is employed as a probationer in a new higher post. Can he be reverted to his old permanent post.

Solution : Yes, sub-section (10) of section 4 of the Bangladesh Labour Act, 2006 provides that if a permanent worker is employed as a probationer in a new post, he may, at any time during the probationary period, be reverted to his old permanent post. As such during the continuance of the probationary period Munim can be reverted to his permanent post at any time.

3. Shathi had been working in a permanent post as a machine operator in a garments factory for the last 2 years. She had a perfect working record and had also received several raise to her of the factory. Although she was not a member of the union she occasionally participated in the union meetings. Two days latter, the management of 3rd January. Shathi was also terminated from her job for her alleged involvement in union activities. She received wages equivalent to 120 days but no compensation. Advise Sathi on the procedure she must follow in order to redress her give

Solution : Only the worker whose service is terminated as a measure of victimisation for trade union activities can challenge the order by filing a case under section 33 of the Bangladesh Labour Act, 2006

Termination under section 26 of the Bangladesh Labour Act, 2006 is a recognised method and an employer has every right to terminate the service of a worker by giving certain benefits and in ordinary cases no case against such termination is maintainable. Under sub-section (90 of section 33 of the Act that no complaint shall lie against an order of termination of employment of a worker under section 26, unless the services of the worker concerned is alleged to have been terminated for his trade union activities or unless the worker concerned has been deprived of the benefits specified in that section. In the present case Shathi's service has been terminated for alleged trade union activities. So she may challenge the order by submitting a grievance notice under section 33 of the Bangladesh Labour Act, 2006 and if her grievance is not redressed she may file complaint to the labour court.

4. There are 150 workers in a factory. Due to meagerness of work the employer requires to reduce the number of workers by way of retrenchment. But at that time an industrial dispute is pending.

Solution : Retrenchment is a recognised method of terminating the services of workers on ground of redundancy provided that the procedure as laid down in section 20 is followed. The conditions under section 20 are: (a) the worker must be given one month's notice in writing

indicating the reasons for retrenchment or he has been paid in lieu of such notice wages for the period of notice; (b) a copy of the notice in respect of retrenchment is sent to the Chief Inspector; and the worker has been paid at the time of retrenchment compensation or gratuity whichever is higher as required. Pendency of industrial dispute is no bar to retrenchment. In a case the High Court held that there is no law prohibiting the employer from retrenching his workers during pendency of Labour dispute. *[Sultana Jute Mills Ltd. Vs. Chittagong, Labour Court , (1990) 42 DLR 340].* In the present case the action of the management is legal.

5. A, B, C, D, E and F were sewing operators of Attire Garments whose date of appointment were 5.1.1994, 15.1.1994, 20.3.1996, 24.3.1996, 25.3.1996 and 20.4.1996. The were retrenched on 19.12.1996. In July 1997 the employer wants to employ 2 operators.

Solution : In case the employer proposes to employ 2 operators the duty of the employer under section 21 of the Bangldesh Labour Act, 2006 would be to send a notice to a, B, C and D to their last known addresses asking them to offer themselves for re-employment. If all the four workers come A and B should be re-employed. In case all of them do not come the workers who seek employment shall have preference over other persons, each having priority according to the length of his service under the employer.

6. Shahin, a worker employed in Lee-Fashion Ltd. He remained absent for 8 days with effect from 1st September, 2007 and on 9th September he filed an application for granting Sick-leave accompanied by a prescription from a quack.

Solution : Under section 116 of the Bangladesh Labour Act, 2006 a worker is entitled to 14 days sick leave with wages in a year. But it is provided in that section that no such leave shall be allowed unless a registered medical practitioner appointed by the employer or, if no such medical practitioner is appointed by the employer, any other registered medical practitioner, after examination, certifies that the worker is ill and requires sick leave for cure or treatment for such period as may be specified by him.

In the present case Shahin has not filed any certificate from any registered medical practitioner in support of his claimed leave and as such the employer is not bound to grant such leave.

7. Concord Workers Union, a registered trade union but not C.B.A, whether can raise an Industrial dispute.

Solution : Industrial dispute is raised under section 209 of the Bangladesh Labour Act, 206 which reads as under :

Raising of industrial disputes : No industrial dispute shall be deemed to exist, unless it has been raised in accordance with this Chapter by a collective bargaining agent or an employer."

So it is quite clear that although Concord Workers Union is a registered trade union it has no right to raise any industrial dispute since it is not the collective bargaining agent. If it raises any such dispute it will be illegal.

8. The Director of Labour refuses to give registration to a Trade Union on the ground that its application is deficient in a material respect. Discuss the legal position.

Solution : The Director of Labour is the authorised officer to accord or refuse registration to a trade Union.

According to section 182 of the Bangladesh Labour Act, 2006 (1) The Director of Labour, on being satisfied that a trade union has complied with all the requirements of this Chapter, shall register the trade union in a prescribed register and issue a registration certificate in the prescribed form within a period of sixty days from the date of receipt of the application for registration. (2) If the Director of Labour finds the application to be deficient in any material respect, he shall communicate in writing his objection to the trade union within a period of fifteen days from the receipt of the application and the trade union shall reply thereto within a period of fifteen days from the receipt of the objection. (3) When the objection raised by the Director of Labour has been satisfactorily met, the Director of Labour shall register the trade union as provided in sub-section (1) and if the objection is not met satisfactorily he shall reject the application.

The applicant union, however, under sub-section (4) when the application has been rejected or the Director of Labour has, after settlement of the objection delayed disposal of the application beyond the period of sixty days provided in sub-section may, within a period of thirty days from the date of such rejection or the date of expiry of such period, whichever is earlier, appeal to the Labour Court.

9. Mr. Yazdani comes to the factory after taking drugs and gets heavily injured in his right leg. Can Mr. Yazdani get compensation from his employer.

Solution : The employer is bound to pay compensation to workmen for injuries caused due to or in connection with his employment. But the employer is absolved from such liability in some cases. An employer shall not be liable in respect of-

(a) any injury, used which does not result in the total or partial disablement of the workman for a period exceeding 3 days,

(b) any injury, not resulting in death, caused by an accident which is directly attributable to- (i) the workman having been at the time thereof under the influence of drink or drugs, or (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed. for the purpose of securing the safety of workmen, or (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

In the present case Mr. Yazdani being under influence of drug sustained injury and as such is in entitled to any compensation from the employer.

10. Rahman Metal Workers union, which is not registered, goes on strike. Describe the legal consequences.

Solution : Strike is a legal and recognised weapon of a workers' trade union for achievement of its demands. A trade union must obtain registration before it begins to function. But the strike must be legal and it must be called on by a collective bargaining agent. An unregistered trade union cannot be a collective bargaining agent and as such it cannot call on any strike.

A trade union, before it begins functioning it must obtain registration from the Registrar of Trade Unions. An unregistered trade union cannot function i.e. if a trade union is not registered with the Registrar of Trade Unions or if the registration is cancelled it cannot conduct any trade union activities. It is provided in section

Carrying on trade union activities by an unregistered trade union is a punishable offence under section 299 of the Bangladesh Labour Act, 2006 which provides that whoever takes part in or instigates or incites others to take part in the activities of an unregistered trade union or of a trade union whose registration has been cancelled or collects subscription, except enrollment fee, for the fund of any such trade union, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand Taka, or with both.

In the above position the strike declared by Rahman Metal Workers union is illegal. It may be prohibited by the Labour Court. Parsons responsible for declaring such strike or who participates in the strike may be charged for misconduct and they also may be punished under section 61A.

11. The defendants occupied a factory where leather was tanned and finished. In the cartilage of the factory there was a pump house which contained transmission machinery used for pumping water under pressure into the factory building. This was an essential part of the works. The transmission a machinery was unfenced and the plaintiff, a worker of the suffered injury when he accidentally came in contact with machinery. The plaintiff charged the defendants with the failure to fence under section 23 of the Factories Act, 1965. In defence to the charge it was pleaded that pump house was not a factory within the meaning of section 2(f) the Factories Act, 1965. Discuss the case in favour of the plaintiff in the light of the above given facts

Solution : Section 2(f) of the Factories Act, 1965 provides that *'factory'* means any premises including the precincts thereof whereon ten or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with or without the aid of power, but does not include a mine subject to the operation of the Mines Act, 1923 (IV 1923).

In the light of the above definition it is quite clear that the pump house is not a factory is not open to the defendant. He must be held liable for fencing the dangerous part of the machinery.

12. A, an employee remained absent for 8 days. His employer as a measure of punishment deducted 16 day's wages- whether it is legal or not

Solution : Even if the employee was absent the deduction could not exceed the wages due to him for the period.. Sub-section (2) of section 126 of the Bangladesh Labour Act, 2006 provides that the amount of such deduction shall, in no case, bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage period, during which by the terms of his employment, he was required to work. In *Arvind Mills Ltd. Vs. K.R. Gadgil, A.I.R. 1941 Bom* case it has been held that deductions from wages on account of absence of an employed person should be in proportion to the period of absence. If a person is absent from duty for a day out of 8 days, he can lose one-eighth of his wages Thus, the deduction in the instant problem is illegal

13. A, a worker of Babul Garments Ltd. filed an application before the Payment of Wages Authority under section 15(2) of the Payment of Wages Act for recovery of his wages for the months of January-April, 2000. After filing of the case the employer paid the wages, but the case was not withdrawn. The Payment of Wages Authority partially decreed the case and awarded payment of compensation of Tk. 2000/= only. The employer wants to challenge the order.

Solution : Under section 132 of the Bangladesh Labour Act, 2006 the Labour Court is empowered to direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of 25% of the wages of the employed person as compensation.

An appeal may be preferred to the Labour Appellate Tribunal under section 135 of the said Act against the direction of payment of wages.

According to sub-section (5) of section 132 the order for compensation can be passed along with the order for the payment of delayed or withheld wages ; but where there could not be any order for payment of delayed wages there cannot be a direction for the payment of compensation alone

Since in the present case the direction is not for payment of wages the appeal shall not lie. In a similar case Bombay High Court held that when the amount of delayed wages has already been paid before an application for a direction is made and the direction is simply for the payment of compensation the order is not appealable. *[Chimanlal Ishwarlal Mehta Vs. Junior Inspector of Factories A.IR. 1942 Bom, 273)]*

14. The employer wants to deduct from wages in 12 monthly installments the amount of money advance to the employee by way of travelling expenses before employment began. The employee opposed. Advise the employer.

Solution : According to section 129 of the Bangladesh Labour Act, 2006 deductions shall be subject to the following conditions, namely:—

(a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling expenses ;

(b) recovery of advances of wages not already earned shall be subject to any rules made by the Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

In the above legal position the employer cannot deduct from wages in 12 monthly installments the amount of money advance to the employee by way of travelling expenses before employment began.

15. X, a student of an Engineering college, while at work met an accident and died as a result of the same. Is the college authority is liable to pay compensation to his dependents?

Solution : The Act applies only to a person who is a "workman" within the meaning of Bangladesh labor Act, 2006 (formerly the Workmen's Compensation Act). In order to be a "workman" within the meaning of the Act a person need be employed as worker. The problem is similar to the incident took place in Maclagan Engineering College, Lahore . In that case *[Inju Singh. Vs. Secretary of State, A I R 1929 Lah. 573.]* the Lahore High Court held that "it is well settled that the person claiming to be a workman must be under the contract of service with some other person. Some apprentices may be excluded from the category of workmen. The Act may or may not apply to apprentices, the nature of contract being the deciding factor in each case. Unless there is contract of service, an apprentice cannot come under the category of "workman". A student of B Class of the Maclagan Engineering College, Lahore, is not an apprentice or workman."

16. One P. Nanu Raman was a bus driver of the appellant corporation. After finishing the work for the day, he left the bus in the depot, boarded another bus to go to his residence and the bus met with an accident and, as a result of the injuries received in that accident, he died. Discuss the liability of the Corporation for payment of compensation

Solution : If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer is bound to pay compensation. The problem is similar to the fact of a decided case. In a case *General Manager, B.E.S.T. Undertaking Bombay Vs. Mrs. Angee* reported *A I R 1964 193* one P. Nanu Raman was a bus driver of the appellant corporation. After finishing the work for the day, he left the bus in the depot, boarded another bus to go to his residence and the bus met with an accident and, as a result of the injuries received in that accident, he died. His widow, the respondent, through an application in the Court of the Commissioner for Workmen's Compensation, claimed compensation by reason of the death of her husband in an accident alleged to have arisen `out of and in the course of his employment`. The application was dismissed by the

Commissioner, but on appeal the High Court passed a decree in favour of the widow. Section 3 (1) of the Workmen's Compensation Act, 1923, is as follows :- `If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provision of this chapter.

17. A boy was employed by a factory in a canteen and it was part of his duty take tea from the canteen, which was outside the factory gate, to serve various person in the factory. One day the boy was returning to the Canteen after having served to certain persons in the factory when he had to pass through a mob of workmen who were leaving the factory. The mob was attacking the police who had to fire in self defence. A bullet struck this boy and he died the following.....

Solution : The present problem is alike to the fact of a reported case of the Calcutta High Court. The accident of the worker was in course of his employment and as such the employer is bound to pay compensation. In National Iron Steel Co. Vs Monorama Case (A I R 1953 Cal 143) case a boy employed for taking tea was killed on his returning to the Canteen after having served to certain persons in the factory was killed. The High Court held the same to be an added peril and that the accident occurred due to and in course of employment.