STANDARDS–RIGHTS NEXUS IN ACTION IN BANGLADESH: TRANSFORMING LABOUR STANDARDS INTO WORKERS' RIGHTS

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Abstract

Labour standards are promoted at the ILO member states level with the presumption that the provisions would translate into rights for the workers. It is, however, neither known whether such translation takes place, nor do we know if the transformative action is at play, to what extent that is a reflection of international standards promoted. This article explores whether and to what extent labour rights provisions in Bangladesh's laws are reflections of international labour standards. I argue that standards promoted at local level hardly reflect the availability of standards, rather is the outcome of how the trade-off between the conflicting interests of workers and employers are played and balanced.

1. INTRODUCTION

Most developed and developing countries accept the labour standards—the minimal rules that govern how people are treated in a working environment—as rights that need to be uphold and enforced. Nearly every developing country has ratified some of the Conventions of the ILO. Such standard provisions in varied forms have been introduced with the presumption that the standard provisions would translate into rights provisions for workers.

The standard provisions are expected to translate into three forms of rights providing access to employment opportunities, which are fair and equal without discrimination (right to work), promoting just and favorable conditions of work including healthy and safe working conditions (right at work), and ensuring adequate standard of living (right through work) for workers. Standards and rights are differentiated in terms of common legalistic interpretation; human rights/ labour rights exist, because the majority of the states of the world have ratified a certain number of human rights treaties/ labour rights conventions, or because national constitution or law confers rights on their citizens. Thus, standards translate into rights when those are reflected in some forms in national legal instruments.

Since its inception in 1919, the ILO has adopted 189 conventions and various recommendations for protecting and ensuring the rights of the working classes. Bangladesh, being a member of the ILO and signatory to many of these conventions, is obliged to promote and protect rights at the national level. The expected transformative action for Bangladesh's workers is that its law provisions should reflect in principle the labour standards provisions enshrined in the international labour standards. The reflection of the major standards are expected in the current Bangladesh labour law because, first, it is a recent (2006) compilation of previous laws which were in operation into a single act of law—Bangladesh Labour Act 2006 (BLA 2006), and second, it is widely considered to be comprehensive in nature; broad aspects of worker rights, and labour and industrial relations including special provisions for specific worker groups are under its purview. However, it is neither known whether such translation takes place, nor do we know if the transformative action is at play, to what extent that is a reflection of overall standards provisions, and whether it has differential outcome for three different forms of workers' rights.

Whether or not the standards provisions translate to rights for Bangladesh's industrial workers is discernable from the availability of similar provisions/ instruments in national legal standards. However, to make a judgment to what extent the labour standards have translated to workers' rights, a mere availability and coverage of contents of the instruments are hardly explicit in terms applicability of legal provisions denoting clear recognition of obligations, and protection and recourse through enforcement mechanisms. The translation, thus, takes a form of or variable in between *no translation* (narrow coverage with minor protection and low recourse) at the one end and on the other *full translation* (broad coverage with strong protection and full recourse). I argue in this article that standards promoted at local level hardly reflect the availability of standards provisions, rather is the outcome of how the trade-off between the conflicting interests of workers and employers are played and balance in between are achieved within the overall vision and logic of action of industrial and labour relations.

This article is divided into three core sections. The three sections respectively analyze whether and to what extent standards and rights nexus are in action for workers in terms of three forms of rights (right to work, right at work, and right through work) juxtaposing provisions of Bangladesh's labour laws with standards applicable to workers.

A. Right to Work

Adequate provisioning and lacking barriers to access to employment are the keys to right to work. I focus on a number of indicators germane to providing Bangladesh's workers' right to work. These are (a) employment contract; (b) elimination of child labour and protection of adolescent; (c) protection against forced and compulsory labour; and (d) protection against discrimination at workplace.

Employment Contract

Numerous international standards exist on employment contract. The ILO, as principle, through the Declaration of Philadelphia emphasized the dignity of labour, and stressed that labour was not to be treated as a commodity. The ILO Convention 122 (Employment Policy Convention, 1964) calls for member states to declare and pursue an active policy designed to promote full, productive, and freely chosen employment. It provides guidelines for ensuring that (a) there is work for all who are available for and seeking work; (b) such work is as productive as possible; and (c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use skills and endowments in a job for which the person is well suited, irrespective of race, color, sex, religion, political opinion, national extraction or social origin (ILO Convention 122, Article1).

The protection to workers afforded by the BLA is applicable to most industrial workers who are employees and have an identifiable employer with whom they have an employment relationship. It provides numerous provisions on contractual arrangements e.g., appointment letter and identity card, service book, employee register, as well as detailed guidelines on job termination both by workers and employers. Under the law, it is compulsory for every employer to issue appointment letter and identity card with photograph to all workers (Section 5), and maintain a register of workers (Section 9). The employers at their own cost should maintain service books for workers (Section 6). However, lacking mandatory nature makes the law ineffective. Giving a copy of the service book to the workers is not binding. Employers are not required to provide service books to the apprentice, exchange or casual workers (Section 6).

Workers have the right to resign from the job after giving notice in writing to the employer or surrendering wages equal for variable notice period (Section 27). In the case of job termination of a permanent worker, the employer should compensate for every

completed year of service, or provide gratuity whichever is higher (Section 27). Employers are also entitled to terminate workers by ways such as retrenchment, discharge, and dismissal. An employer can dismiss a worker without serving prior notice if the worker is (a) convicted for any criminal offence; or (b) proved guilty of misconduct (Section 23). The employer is also allowed to terminate worker without explaining any reason by giving a written notice.

These provisions on employment contracts as well as on job termination guidelines show that there is a strong coverage of standards. However, the inherent weaknesses of the provisions have left rights provisions to be ineffective. Job-termination procedures are riddled with time-binding concerns. BLA has prescribed different notice-period for termination, varying according to the status of the workers—sixty days, thirty days and fourteen days for permanent, temporary but monthly basis, and other workers respectively. An employer is not required to assign any reason to terminate a worker. Moreover, the notice period for the temporary workers in this regard is quite short—30 days and 14 days for workers respectively employed on a monthly and on other basis. In the case of retrenchment and discharge, a worker must complete minimum one-year service to get financial benefits. The provision of dismissal is exploitative in nature; it allows termination of workers without prior notice. This provision deprives a worker from compensation when dismissed due to misconduct which is easily provable by the employers due to its wide scope of interpretation.

Based on the availability of provisions in the national law on employment contract similar to those provisions laid out in the standards, the standards have mostly translated if not fully to rights provisions. However, a lens on the effectiveness of such provisions provides a different scale of translations, hardly translated. Overall, the standard provisions translation to workers' rights can be categorized as strong coverage but limited protection with low recourse.

Elimination of Child Labour and Protection of Adolescent

The obligations as of ILO Conventions on child labour are related to age of children, and permissible work by children. Each member of the ILO is obliged to pursue a national policy designed to ensure effective abolition of child labour and to establish the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons (ILO Convention 138, Article1). The children under the

age of 15 years are not permitted to be employed in any public or private industrial undertaking except special circumstances. National laws or regulations may permit children to be employed in undertakings in which only members of the employer's family are employed (ILO Convention 59, Article 2). Developing countries are, however, entitled to relax age of children to 12 years for light work not harmful for health, development, and education (ILO Convention 138). Every employer is however required to maintain a register of all persons under the age of eighteen years (ILO Convention 59, Article 4).

According to BLA, no children below 14 years are allowed to work, and the parents or guardians of a child shall not make any agreement with any person or establishment, to allow the service of the child. However, the law also proclaims that a child who has completed twelve years of age is permitted to be employed in such light work which is not harmful for health and development or must not hamper education, and the hours of such school going child must be so arranged that do not impede school attendance (Section 34, 35, 44). The rules barring adolescent in hazardous, unsafe or unhealthy employment are detailed in the labour law (Section34.2).

The available labour law provisions comply with the provisions of the ILO, even though Bangladesh is not a signatory to the relevant ILO conventions (Convention 59 and 138). Bangladesh's standard on elimination of child labour and protection of adolescent make use of the exemption provision that is available for developing countries in setting the minimum age of employable children. The relaxation of rule on age of children to 12 years for light work not harmful for health, development, and education, in effect, allow employment of children in general since the law does not define what constitutes light work, and also because it is difficult due to lack of birth registration system to ascertain the age of workers. Thus, in terms of availability the translation of standards to rights may be categorized as mostly translated, but in terms of effectiveness of those provisions have translated partly, denoting an overall categorization of translation in between partly to mostly—strong coverage with partial protection and partial recourse.

Protection against Forced and Compulsory Labour

Forced labour is defined by ILO as, "all work or services which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Convention 29, Article 2.1). Bangladesh has ratified relevant ILO Conventions. Forced labour is strictly prohibited as per the constitutional framework. Article 34 of the Constitution states "All forms of forced labour are prohibited and any

contravention of this provision shall be an offence and shall be punishable in accordance with the Law." There is no specific provision in its labour law, nor is it defined. However, all forms of forced labour are prohibited and any contravention of this provision is punishable offence in accordance with Bangladesh's civil law. Thus, in terms of availability and effectiveness of the provisions, the standards provisions have translated fully—broad coverage with strong protection and full recourse.

Protection against Discrimination at Workplace

Discrimination at work is defined by the ILO as "any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation" (Convention 111, Article1). ILO adopted the equal remuneration convention (ILO, Convention 100) to prevent discrimination in employment providing for the application of equal remuneration for men and women workers for work of equal value. As regards protection against discrimination in terms of treatment and facilities, according to ILO Convention 111 (Article 2), member countries are obliged to promote equal opportunity and treatment in respect of employment and occupation.

Bangladesh's law provisions relating to protection against discrimination mainly are focused on wage and sex. Employers are obliged to ensure equal wages for male and female workers for work of equal nature or value, and no discrimination should be made on the ground of sex (BLA 2006, Section345). The positive aspect of the current law is that in line with the ILO provision, it mentions the principle of wage setting is equal pay for equal value of work. However, the current provision lacks specific provisions on discrimination related to workplace facilities and treatment. Again, only the sex of workers has been considered as discrimination ground; different other grounds of discrimination e.g., race, religion, ethnicity, and age is not included. This omission contrasts with Bangladesh's Constitutional stands against discrimination on the grounds of religion, race, caste, sex or place of birth (Article 28, Bangladesh Constitution). In view of these, standards in terms of availability have partly translated into rights, but in terms of effectiveness, the translation may be considered as mostly translated. This is due to fact that the presence of strong Constitutional guidelines against discrimination makes the available provisions mostly applicable if not fully.

In summary, the standards have been translated partly. A difference is evident in terms of availability and effectiveness of the provisions translated. With the only exception of protection against forced and compulsory labour which has fully translated in terms of both availability and effectiveness, overall availability of the rights provisions indicate that standards have been translated mostly but in terms of effectiveness it is partly translated.

B. Rights at Work

The key provisions of right at work relate to promoting just and favorable conditions of work, to ensure sanitary, healthy, and safe working conditions. In this section, I focus on a number of provisions e.g., working hour and rate of overtime, leave and rest, occupational health and safety, welfare facility for the analysis of whether and to what extent standards and rights nexus is in action for Bangladesh's workers.

Working Hours

According to the ILO Convention 1 regarding hours of work, the working hours of persons should not exceed eight hours in a day and forty eight hours in a week. There are flexibility clauses to allow average hours and exceptions. The limit of hours of work may be exceeded to fifty six in the week in cases of processes carried on continuously by a succession of shifts (ILO Convention1, Article 4). The maximum of additional hours in each instance should however be fixed after consultation with the organizations of employers and workers (ILO Convention Article 6.2). To protect women as well as adolescent from non-standard working conditions, the ILO has provided specific provisions on night duty restriction; women without distinction of age are not to be employed during the night in any public or private industrial undertaking, other than an undertaking in which only members of the same family are employed (ILO Convention 89). Young persons under eighteen years of age are also barred from working during the night (ILO Convention 90).

BLA 2006 allows every adult worker to work without overtime, maximum eight hours a day and forty eight hours a week (Section 100). An adult worker may be employed for work of 10 hours a day and more than 48 hours a week on condition of giving overtime allowance for extra working hours, but the daily and weekly maximum overtime work should not exceed more than two hours and 12 respectively, and the total hours of work of an adult worker shall not exceed 60 in any week and on the average 56 hours per week in any year (BLA 2006, Section 100 & 102).

In terms of night duty restriction, it proclaims that no female worker is allowed to work without her consent between the hours of ten o'clock in the evening and six o'clock in the morning, and for young workers the forbidden work hours is between the hours of seven o'clock in the evening and seven o'clock in the morning (Section 109 and 41.3).

Bangladesh has ratified the ILO Convention 1, and the current labour law in terms of availability of provisions complies with the labour standards regarding average daily and weekly work hour, and night duty restriction of young workers, but contradicts with night duty standards for women workers. Though, the law prohibits employers to employ women workers for the hours between ten o'clock in the evening and six o'clock in the morning, the law, however, with consent of women workers, allows employers to engage women worker at night even in those establishments where family members of the women worker are not employed. Thus, the standards have translated in terms of availability mostly and in terms of effectiveness partly. The overall translation of labour standards has been in the range of 'partly to mostly'.

Rest and Leave

The ILO Conventions touch on rest and leave provisions including rest and leisure, weekly and public holidays, annual leave, and maternity leave. All workers have the right to enjoy a period of rest comprising at least twenty-four consecutive hours in every period of seven days (ILO Convention 14, Article 2). Every worker is entitled after the first year of employment to an annual leave with pay of at least six working days; employers are required to increase the duration of the annual leave with pay, with the length of service under conditions approved by national laws and regulations (ILO Convention 52, Article 2). The ILO Convention 103 provides women workers rights to enjoy at least 12 week maternity leave.

Bangladesh's labour law provides rights provision related to rest and leave. Workers shall not be responsible to work unless they are allowed an interval for rest or meal of at least half an hour for work up to five hours, and an hour for work over six hours to eight hours (BLA 2006, Section 101).

In terms of leave provisions, every adult worker employed in a shop or commercial establishment, or industrial establishment, has the right to enjoy one and a half day's holiday in each week, and in factory and establishment one day in a week (Section 103). Every worker is entitled to ten days in a calendar year as casual leave with the full wages (Section 115), and eleven days of paid festival leave in a calendar year (Section 118). Each

worker, who has completed one year of continuous service, is entitled during the subsequent period of twelve months to leave with wages for a number of days as annual leave. The annual leave is one day for every eighteen days worked in a year for adult workers, one day for every fifteen days for adolescent workers employed in a factory (Section 117). Every worker employed in a factory is also entitled to fourteen days of sick leave in a calendar year with full wages (Section 117). A female worker is entitled to maternity leave with pay of sixteen weeks (eight weeks before and eight weeks after delivery) (Section46).

Indeed, Bangladesh's labour law in terms of availability of instruments related to rest and leave is wide in coverage. However, the weekly holiday provision hardly matches with the ILO standards— twenty-four consecutive hours in every period of seven days. Numerous provisions of law are also discriminatory. In case of weekly holiday, the law has made provision of one-day holiday for workers of factories, while workers employed in shops, commercial, and industrial establishments are entitled to enjoy one and a half-day holiday. The annual leave provisions make discrimination not only between workers in factories and industrial establishments, but also with different categories of workers.

Due to wide availability of law provisions, translation of standards may be categorized as mostly translated into rights, the effectiveness criteria indeed provide different categorization of such translation. It is from that lens, partly translated, and overall, the translation of standards to rights is in between partly to mostly, but not fully. The discriminatory provision on annual leave makes the right to annual leave less effective. The absence of certain core elements e.g., lacking consent and choices of the workers, long term perspective on festival bonus, sick leave and maternity leave, makes those provisions prone to violation. The festival leave has left scope for employers to engage workers in work during festivals. The issue of consent of workers in engaging them during festival is absent. Concerning the sick leave, the law lacks specific provisions on leave and wage in the case of long-term illness. In case of maternity leave, the leave period is fixed as eight weeks preceding the expected date and eight weeks immediately following the day of delivery. The fixed division of the period in effect does not allow women workers to enjoy the full leave period according to their choices of suitable period of maternity leave. The law also lacks provision of long-term leave in case of abortion and pre-mature birth and other pregnancy related complexities. Moreover, there is also time binding, at least six month-long work under the current employer is needed to be entitled to maternity leave.

Occupational Safety and Health

The obligations originating in rights legislation form of standards on occupational safety and health (OSH) provisions are broad-based. The ILO obliges states to establish coherent national policy on occupational safety, occupational health and the working environment aiming to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing the causes of hazards inherent in the working environment (ILO Convention 155, Article 4). To improve the environment of workplace, ILO convention (Convention 120) has made various provisions on cleanliness, noise, temperature, ventilation, lighting, ergonomics, pure drinking water and gender segregated toilet/washroom.

Bangladesh's labour law on OSH is encompassing, and touched on three areas of protection: (i) occupational accidents, hazards and diseases; (ii) safety equipments and facilities; and (iii) workplace environment (Chapter VI and VII). BLA 2006 states that the machineries which are moving and in motion, should be securely fenced (Section 63), and screw, belt or key or any revolting shaft, spindle of any machinery driven by power should be covered (Section 67) to prevent accidents. The floors, stairs, passages and gangways of the establishment should be of sound construction and properly maintained, and all floors, ways and stair ways should be clean, wide and clear of all obstruction (Section 72). Employers are also obliged to inform the inspector about certain specified diseases if contacted by worker (Section 82). The rights provisions related to safety equipments and facilities are reflected in the law provisions on fire fighting apparatus and emergency fire exit, protective kits (gloves, masks, helmets), and safety of buildings and machineries (Section 62). Each employer is obliged to take measures to protect workers from dangers and damage due to fire. The workplace environment related rights provisions are reflected in detailed law provisions on cleanliness, noise, temperature, ventilation, lighting, dust and fumes, humidity, working space, dustbin and spittoon, waste management, ergonomics, pure drinking water, and gender segregated toilet (Section 51-59).

Indeed, law provisions in terms of occupational accidents, hazards and diseases, safety equipment and facilities, and workplace environment reflect fully of those of the provisions of standards. In terms of effectiveness, number of provisions relating to role of inspection by appropriate authority in ensuring the safety equipment and facilities (Section83-85), show that the provisions have fully translated too. One point of such categorization is the issue of empowerment of workers through these right provisions. The current law has provided workers with the right to be informed by the employers about

buildings and machines which are dangerous /risky. If the employers do not take any measure within specified timeframe, and thereafter, accidents occur, the workers will get compensation at twice the normal rate of the compensation (Section 86). Also, the current law has made mock fire-fighting drill mandatory for the industries where fifty or more workers are employed (Section 62). The current law has also made safety record book compulsory for employers employing more than twenty five workers (Section 90). It provides provision to constitute a national council for industrial health and safety to ensure occupational health and safety of the workers at their workplaces (Section 323).

Welfare Facilities

International instruments provide guidelines to rights to welfare facilities for the wellbeing of the employees at workplace. Two of the major general welfare facilities in the areas of healthcare and skill development are provided by the ILO guidelines. The provisions include: general practitioner care; specialist care at hospitals for in-patients and out-patients; essential pharmaceutical supplies; and hospitalization and pre-natal, confinement and post-natal care either by medical practitioners or by qualified midwives (ILO Convention 102, Article10). According to this Convention (Article 19), every establishment, institution or administrative service, or department shall maintain (a) its own dispensary or first-aid post; or (b) a dispensary or first-aid post jointly with other establishments, institutions or administrative services, or departments; or (c) one or more first-aid cupboards, boxes or kits. For workers' skill development, ILO provides the provision that each member countries adopt and develop policies and programs of vocational guidance and vocational training, closely linked with employment to encourage and enable all persons to develop and use their capabilities for work in their own best interest and in accordance with their own aspirations (ILO C142). Besides this provision, a recommendation also made by ILO concerning this issue stating that the human resources development, education, training and lifelong learning policies should be identified by states which: (a) facilitate lifelong learning and employability; and (b) stress the importance of innovation, competitiveness, productivity, growth of the economy, the creation of decent jobs and the employability of people (ILO Rec.195).

Bangladesh's labour law has covered numerous provisions. For example, the law has stated that every employer is required to provide (a) equipped first aid boxes or shelf (one for every 150 workers), and equipped dispensary with a patient-room, doctor and nursing staff where 300 or more workers are employed (Section 89); (b) canteen facility

where more than 100 workers are employed (Section 92); (c) adequate and suitable rest-rooms for use of workers where fifty or more workers are employed (Section 93); and (d) children room for the children of under six years of age, wherein forty or more female workers are working (Section 94).

In terms of availability, the standards provisions, have mostly translated, even though the issue of skill development and lifelong learning for employability are hardly spelled out in the current law. The BLA 2006 defined apprentices, and their obligations including participating in training organized by the employer. The law, however, has set as one of the functions of the Participation Committee to encourage vocational training, workers education and family welfare training for inculcating and developing sense of belongings and workers' commitment. Overall, the current law of the country in relation to welfare facilities is broader than the existing provision of labour standards to include canteen facility, and child care. The effectiveness of these provisions, however, makes a different categorization—partly translated, and accordingly, overall, the translation of standards on welfare facilities into right provisions is in the range of partly to mostly.

This categorization is due to two reasons. First, ambiguity and numerical bindings of some provisions render the law inapplicable to all workers. The law provision related to dispensary at workplace is subject to number of workers (three hundred or more). It is also not clear whether workers need to pay to get services from the dispensary. Similarly, several facilities are subjected to the total number of workers: canteen facility to hundred, rest room to fifty, gender segregated restroom to twenty five female, and day care facility to forty female workers. Second, the provisions are exclusionary and discriminatory—not provide same welfare facilities for all workers. The BLA has included provisions on accommodation and recreational facilities only for the workers of tea-garden, and specific provisions on healthcare applicable only to newspaper industry workers.

To sum up, key standards provisions relating to working hour, rest and leave, occupational health and safety, and welfare facility have mostly translated into rights provisions (broad coverage with strong protection but low recourse). In terms of availability of provisions, all the above provisions have translated in the range of 'mostly to fully'. Bangladesh has not ratified the relevant ILO convention (Convention120). Nevertheless, the rights are detailed, and capture the spirits of standards promoted. In terms of effectiveness, the translation of standards is not that straightforward, many of the provisions relating to the above are prone to ineffectiveness. While three standards provisions—working hour, rest and leave, and welfare facility—have translated partly, in

view of the effectiveness, the standards on occupational health and safety have translated fully due to its mandatory provisions.

C. Rights through Work

The key provisions of rights through work relate to promoting an adequate standard of living by ensuring adequate provisions and non-discrimination in wages and benefits as well as in equal access to and outcome of employment. Accordingly, the standards and rights nexus is at play in wage and benefits, social security instruments, and labour relations and social dialogue.

Wage and Work related Benefits

The ILO Conventions have made provisions to ensure fair wage and benefits for the working people. According to ILO Convention 131, states are required to establish or maintain a system of minimum wages which covers all groups of wage earners and is to be fixed and adjusted from time to time (Article4). The ILO delineates clear guidelines for determining the level of minimum wage as (a) needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; and (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Bangladesh's labour law defines wages to include other benefits, and elaborates procedures of wage fixation (Chap. XI). According to BLA 2006, government is required to establish a Minimum Wage Board to determine and declare rates of wages (including the minimum) for workers. Few specific provisions are important from the perspective of the effectiveness, however. First, the wage determination does not require considering family size of the workers, and also no mention is made how the balance between efficiency (profit) and equity (workers' protection) would be made while considering the wage structure. This is important in view of the diverging claims of actual implementation of labour laws in Bangladesh from the part of the employers and workers. The wage review span is fixed in the law as after every five years—which fails to capture monthly changes in the cost of living for workers. Wage fixation does not cover the process of automatic adjustment to inflation which is high in the country, and much higher for food items the working poor consume. A number of issues germane to the wage fixation make

the function of the board ineffective due to scope of political/government influence. First, the tenure for the members of wage board is not fixed. Second, representative selection process for the board members (workers' and employers' representatives) is absent. Third, the criteria for selection (both process and eligibility) of the Independent Member to the wage board are not specified.

The law has made obligatory for employers to provide all remuneration on a regular and timely manner. Wage payment should be made within the expiry of seven working days after the last day of wage period (Section 123). The wages payable to worker should be paid within seven working days from the day of termination (by way of retrenchment, discharge, removal, dismissal or otherwise) (Section122, and123). It also has elaborated provisions on wage deduction—no deduction shall be made from the wages of workers except few permissible cases and specified fines (Section 25). Nevertheless, there remains wide scope of employers' discretion on the above in effect prone to possible violation. The source from which the wage deduction is permissible is not clearly mentioned. Also, the law does not make it clear whether wage would be deducted for unauthorized leave if casual leaves remain un-enjoyed. As regards overtime rate, the law states that workers are entitled to allowance at the rate of twice the ordinary rate of basic wage and dearness allowance and ad-hoc or interim pay (Section108). However, the calculation of overtime is difficult in some cases especially for the workers who do not work on either full or part time basis but on the basis of production (piece) or from home. The procedures and fundamentals for fixation of minimum wage have no reference to piece rate or home based workers. In addition, the lacking provisions related to festival bonuses, and other allowances e.g., healthcare, transportation, recreation left many of the financial benefits to the discretion of employers.

With regards to other benefits to workers, an important provision is the right of the workers in company's profit. The law has established detailed provisions on participation fund and welfare fund for workers, in effect to share company's profits (Section 232.1). The law obliges that every company to constitute a Workers' Participation Fund and a Workers' Welfare Fund for its workers, and should pay five percent of its net profit yearly in proportion of 80:20 to such funds (Section 234). However the profit share is applicable for the company if it has (a) one hundred workers; (b) BDT ten million as paid up capital; and (c) BDT twenty million of value of the permanent assets. But, these are prone to violation in view of the numerical bindings on number of workers, and paid-up capital and value of permanent assets of employers.

The rights provisions align with the international standards. In terms of contents too, it not only covers procedures and factors of wage fixation, but also go beyond to establish plain provisions on regularity of payments, wage deduction, overtime rate, and workers' participation in company's profits applicable to workers. However, these provisions are difficult to implement in view of their inherent shortcomings and due to absence of concrete modalities for implementation. The standards provisions as regards wage and work related benefits while have fully translated into rights in terms of availability, but hardly have translated in terms of effectiveness of those provisions. Thus, overall, the extent of translation of standards provisions to related rights provisions is in a questionable magnitude—ranging from 'hardly to fully'.

Social Security Instruments

Each Member of ILO is required to set up or maintain a scheme of compulsory old-age insurance/pension, and sickness insurance. The insured person is entitled to an old-age pension at an age which shall be determined by national laws or regulations but not exceeding age sixty-five (ILO Convention 35). A person incapable of work by reason of the abnormal state of bodily or mental health shall be entitled to a cash benefit for at least the first twenty six weeks of incapacity (ILO Convention Article3).

ILO Conventions concerning compensation lay down detailed provisions on in case of industrial accident-led personal injury (Convention 17), and incapacitation by occupational diseases (ILO Convention 18). The ILO Convention 103 states that a woman is entitled to receive cash and medical benefits during maternity leave (Article 4.1 and 4.3).

Bangladesh's labour law has matching provisions in the areas of insurance, compensation, and maternity benefits, but no specific provisions on pension. Instead, two other provisions intending to provide social security benefits to workers are provident fund, and gratuity. Overall, the rights provisions enshrined in the BLA 2006 reflect partly in terms of availability of the standards provisions. This categorization is due to advancement in comparison with previous laws of the country. First, benefit to family of deceased worker, the present law has made a new provision to provide some financial support to the family of a deceased worker (Section 155). Second, increase in compensation amount, the law has increased the amount of compensation to be given to the workers for injury, disability and death due to workplace related accidents (Section 151). Third, increased coverage of provident fund, the law has extended the coverage of

provident fund from only tea-garden and newspaper industry workers to all other private sector workers (Section 264). Fourth, mandatory provision, the current law has made the group insurance mandatory (Section 99).

Nonetheless, inherent weaknesses of these laws and lacking mandatory guidelines on many of these provisions make these ineffective. The provision of gratuity is optional under the provision of law. The provision of provident fund is subject to numerical bindings—at least three fourth of the total workers of any factory/establishment require to submit an application to their employer requesting to form provident fund (Section 264). The introduction of group insurance too is dependent on the number of workers—may be formed where minimum 200 permanent workers employed. These numerical bindings while exclude workers in establishments of smaller size, it also keep open the scope for violation through manipulation of numbers and employment contracts. The social security provisions have also been subjected to time bindings as preconditions to receive benefits. In case of maternity benefit, at least six-month long continuous work is needed to receive maternity benefit from the employer, and three-year long continuous service is needed to get the benefit to family of deceased worker (Section 19). There is also lack of implementation modalities. The law does not include provisions of medical care as part of the maternity protection and benefit, similar to ILO standards. No specific provisions are there on treatment and rehabilitation, and alternative skill development for workers. Furthermore, the rights provisions on compensation are narrow, as well as discriminatory in terms of age. An adult worker gets BDT 125, 000 as compensation for complete permanent impairment whereas a child/adolescent/young worker gets only BDT 10,000 on the same ground. Hence, in terms of effectiveness, the standards provisions related to social security have hardly translated giving an overall categorization of translation in the range of in between ‘hardly to partly’.

Labour Relations and Social Dialogue

The ILO conventions have obliged states in relation to labour relations and social dialogue. One of the most important of such standards is the freedom of association (FoA). The international standards on FoA are broad-based covering features like right to form and join association, freedom to elect union representation, protection against victimization and discrimination when joining and forming union, and protection against interference.

The ILO Convention (Convention 87) has laid down that workers without distinction whatsoever have the right to establish and join organizations of their own choosing without previous authorizations, and each member countries obliged to undertake all necessary and appropriate measures for ensuring free exercise of workers right to organize (Article2 and 11). Workers rights to affiliate with federations and alliances are also proclaimed (ILO Convention 87). The rights to draw up union constitutions and rules, elect representatives in full freedom, and organize administration and activities and formulate programs are part of the ILO Convention 87. Safeguards against victimization and discrimination in joining and forming union are afforded through the ILO Convention 98. It declares that workers have the right to enjoy adequate protection against acts of anti union discrimination in respect of their employment, and the protections bar employers to make employment and/or the dismissal of or otherwise prejudice a worker by reason of union membership and participation in union activities outside working hours (Article 1). It too provides protection to workers and to both workers' and employers' organizations against any acts of interference by public authorities, or by workers and employers or by their agents (Article 2).

The other important standard is CB—recognized as one of the basic rights of the workers by different international instruments. The ILO has obliged member countries to take appropriate measures "to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements" (Convention 98).

Bangladesh's labour law has provided the right of every worker to form and join trade union by their own choice. Every worker employed in any establishment is entitled to form and join trade union, by their own choice (Section 176). The trade unions of workers have the right to form and join in a federation of their trade unions and such unions and federations are permitted to affiliate with any international organization and confederation of trade unions (Section 176 C). The trade unions have the right to draw up their own constitution and rules, to elect their representatives, and organize their administration and activities and formulate their programs (Section 176 d). It makes specific bindings on employer or trade union of employers, and on the person acting on their behalf for protection against victimization and discrimination, but does not provide any specific provisions as regards protection against interference similar to those of the international standards.

On the whole, labour standards have fully translated in terms of availability of the provisions. The standards on FoA are well elaborated and reflect the international standards. The categorization of full translation of standards in terms of availability is also due to advancement in the law in comparison with those of the previous laws. The advancement relates to: (a) protection for workers during trade union formation—barred employers to terminate workers while they are in the process of establishing trade union at their workplaces; (b) extended coverage—protection to person during trade union formation and selection of officials has been extended to the group of establishments; and (c) strict restriction of transfer of trade union officials—the provision of not transferring the president and secretary of trade union from one place to another without their consent has been extended and made specific.

The effectiveness criteria of the translation, however, amply show that the standards have hardly translated. This is due to a number of reasons. First, there is a contradiction with international norms. To form a trade union, there is a pre-requisite of 30 percent of the total number of workers employed in any establishment or group of establishments which does not correspond to norms on all workers' rights to form and join trade union, especially with the ILO convention 87 to which Bangladesh is a signatory. This numerical binding excludes large majority of workers since it causes obstacles to their freedom to form and join unions. Second, the FoA and CB rights are exclusionary as well as discriminatory. The requirement of mandatory support of 30 percent workers for trade union applies to workers, but similar condition is not applicable to organizations of the employers. Third, obstacles to representation make the rights provisions ineffective. A person is not entitled to be elected as a member or an officer of a trade union if the person is not employed or engaged in that establishment in which trade union is formed (Section 180.1b). The provision bars workers in choosing their own representatives in full freedom. Furthermore, the differential law regime in Bangladesh's export processing zones (EPZs) posing significant restrictions and delays in relation to the right to organize. The EPZ Workers Association and Industrial Relations Act (EWAIRA) (2004) provided for the formation of trade unions in EPZs but with several phases, and complicated and cumbersome procedures of implementation. The EPZ workers are outside the purview of the BLA 2006, and the EWAIRA does not conform to core ILO conventions particularly on the FoA and CB. The law allows employers in the EPZs to continue to deny workers rights' to FoA and CB.

On the right to CB, BLA provides a number of provisions including on rights to bargaining, scope and procedures of bargaining, procedures of settling industrial disputes, right to strike, workers' protection during lay-off, and tripartite consultation. A trade union is allowed to work as a collective bargaining agent (CBA) in any establishment (Section 202). The current law has extended the possibilities of including non-CBA unions in participation committee which can be formed by equal number of representatives of employers and workers (Hossain, Ahmed and Akter 2010). Despite this advancement, there is pre-condition for a trade union to act as CBA—if more than one trade union exists and election is not held, then a trade union will act as CBA if it enlists membership of at least one-third of the total workers of the institution. Calling a strike is also dependent on the support of pre-requisite number of members for the CBA—support of at least three-fourth members of the CBA is necessary.

The BLA has provided elaborated procedures to settle industrial disputes by the employer or CBA through processes of negotiation, conciliation and arbitration (Section 210). 1 If industrial disputes are raised, at first, the CBA shall communicate with other party in writing. The recipient party shall take initiative to arrange a meeting for negotiation within fifteen days. If the negotiation fails, it shall forward to the conciliator. If the dispute is settled through conciliation within 30 days, the conciliator shall report it to the government. If the conciliation turns into failure, the conciliator refers the dispute to an arbitrator. Arbitrator shall present an award within thirty days or period agreed by both parties after the dispute is received. The CBA may provide a notice of strike or lock-out. The specific time-limit for every stage of dispute settlement is a positive aspect of the law in comparison with that of the previous laws (Hossain, Ahmed and Akter 2010). However, within the process, the right to strike has been weakened due to the necessity of the pre-requisite support for action. No CBA can serve any notice of strike or lock-out unless three-fourths of its members support it (Section 211.1). Furthermore, the law has imposed a three years ban on strike in newly established industries, and industries established or supported by foreigners. The ban on strike in many of the industries falling within the above category is not only contradictory with the workers' right to strike but also has made rights provision ineffective.

The BLA provides protection to workers during lay-offs but not during lock-outs. Protection during the lay-off is also subject to time bindings and in effect exclusionary for many of the workers. Entitlement to such protection requires enlistment of worker in master-role, and at least one year continuous service under the employer. Hence, on CB,

rights provisions in terms of availability fully reflect those of the standards prevailed in three standards forms, but on effectiveness, standards have hardly translated to rights provisions applicable to workers. Overall, the labour relation and social dialogue standards translation is in the questionable range varying between 'hardly to fully'.

In summing up, the key provisions of right through work relating to wage and benefits, social security instruments, and labour relations and social dialogue provide a much diverged categorization of translation. While the availability lens on the above indicators show that the standards provisions almost fully translated to rights provisions for Bangladesh's workers, the only exception being the provisions of social security which has partly translated. The effectiveness criteria made it clear that all three indicators have hardly translated. The overall translation of the labour relations and social dialogue can only be categorized as partly (broad coverage with limited protection with low recourse). This indeed contrasts much with the expected reflection of the standards delineated in three forms of labour standards in action for workers.

4. CONCLUSION

The overall reflection of the law provisions juxtaposing with those of the standards has given the scope to see whether there is any translation of standards to rights, and also to categorize translation based on availability and effectiveness of the provisions. The standard provisions have translated into three different forms of rights—right to, right at, and right through—for workers, but not at a same level.

The standard provisions in relation to right at work (employment contract, elimination of child labour and protection of adolescent, protection against forced and compulsory labour, and protection against discrimination at workplace) have translated partly in terms of both availability and effectiveness. The key standards provisions relating to rights at work (working hour, rest and leave, OHS, and welfare facility) have mostly translated into rights provisions in terms of same availability and effectiveness criteria. The transformative action for the key provisions of rights through work analyzed in relation to wage and benefits, social security instruments, and labour relations and social dialogue, contrasts much with the expected reflection of the standards provisions delineated in three forms of labour standards for workers. The availability of standards provisions on the above standard provisions almost fully translated to rights provisions, the effectiveness lens however shows that all three indicators have hardly translated. Thus, an overall categorization of broad scope with limited protection and low recourse is made

in terms of right through work. The differential outcome in terms of availability and effectiveness is most wide for standards translation into rights through work. It implies that the trade-off between the conflicting interests of workers and employers are much poorly balanced in cases of standards of the rights through work.

The transformative action for each of the rights forms and their specific indicators are not so straightforward, there are indeed exceptions in terms of numerous indicators. The following are three of those.

First, two indicators, one each from right to work (protection from forced and compulsory labour), and right at work (occupational safety and health) have no difference of translation in terms of availability and effectiveness, both translated fully. These are the two indicators those performed best in terms of translation in comparison with other indicators. The standard on protection from forced and compulsory labour is one of the most elevated standards in all there forms. The other, occupational safety and health have been low profiled in all the three forms. Moreover, Bangladesh has ratified relevant ILO convention as regards the first, but not any relevant one as regards the second.

Second, two of the indicators, one each from right to work (employment contract), and right through work (social security) have shown minor difference in between availability and effectiveness. This is because, the standards provisions on employment contract, and social security are broad based lacking specific guidelines. The rights legislation form of standards also does not provide very specific guidelines on the modalities of standards to be implemented at the national level.

Third, there are two indicators, both from right through work (wage and work related benefits, and labour relations and social dialogue) which show large variation in terms of availability and effectiveness of standards translation. There is a difference between the two standards though. The standard related to wage and work related benefits are hardly articulated in any of the three standards forms. In contrast, the standards related to labour relations and social dialogue is quite elaborated in all the three forms of standards, and these are also the part of ILO's core labour standards.

Overall, the transformative action amply shows that in between three forms of rights, two of the rights—rights to work; and rights at work— forms translated more than the rights through work. This implies that not all forms of rights are prioritized the same way in national settings. Some standards within particular forms of rights are promoted and made effective, while others are not promoted at the same level in terms of availability and effectiveness. While some forms and some of its specific contents of standards get

promoted more than the others, certainly there are forms of standards which even promoted to a higher level but have been rendered ineffective due to its inherent shortcomings, exclusionary and exploitative nature, lacking mandatory mechanisms, existing cost burden to workers, lengthy procedures, and lacking remedial instruments, all of which could either due to acts of omission or acts of commission by the state and non-state actors, but certainly prove to fact that these are the areas where the conflicting interests of workers and employers are poorly balanced.

This contrasts to the expected transformative action—the prioritization and the emphasis accordingly upon certain forms of standards, do not get translated in the same fashion. What standards would be promoted and what would not at local level as the analysis in this article shows hardly is a function of what is promoted through international labour standards, rather depends upon how the trade-off between the conflicting interests of workers and employers are played, and balance in between are achieved.

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