

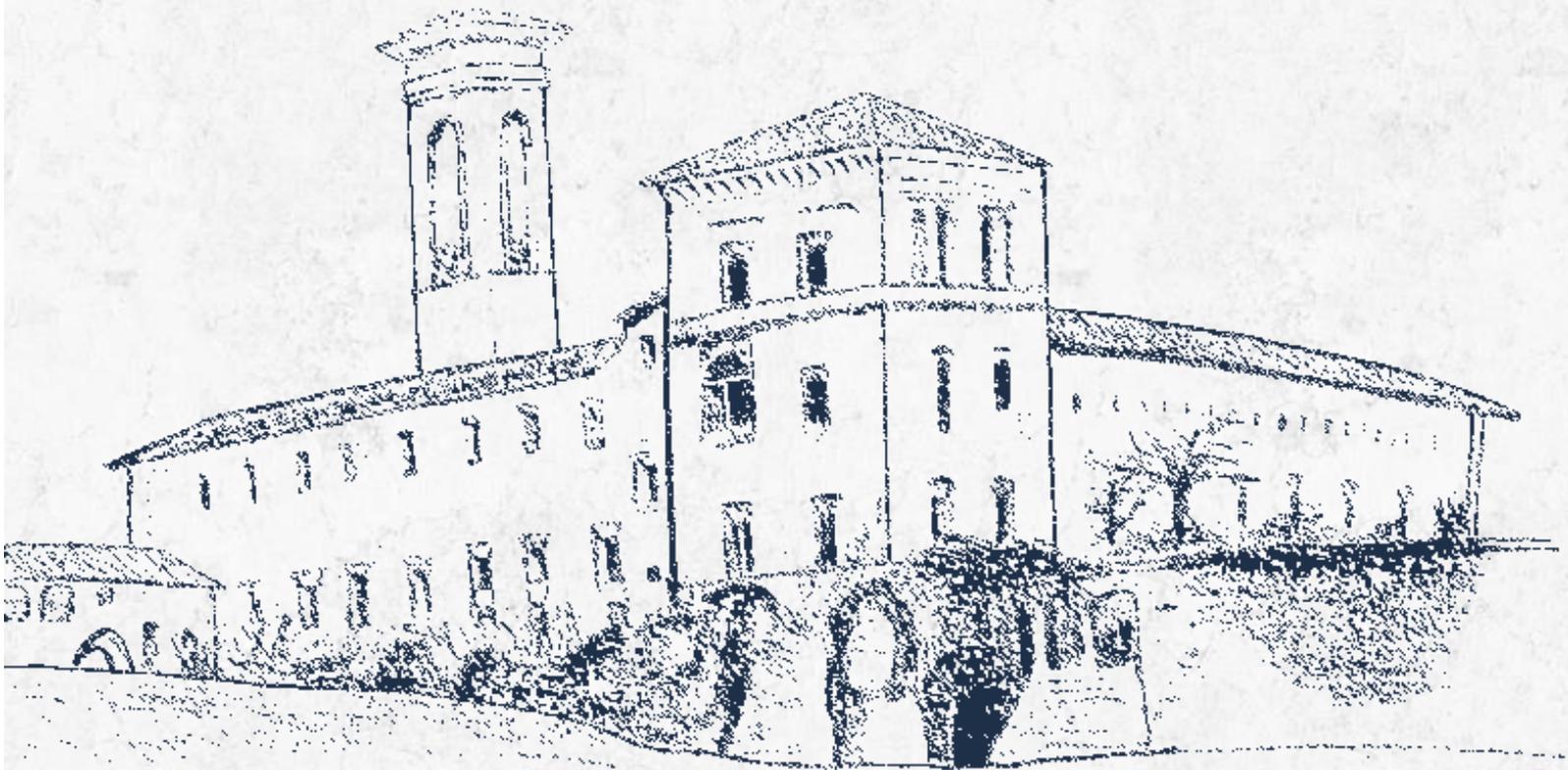
OPEN ACCESS

ISSN 2280-4056

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 9, No. 2, May-June 2020



ADAPT
www.adapt.it
UNIVERSITY PRESS

Managing Editor

Valeria Fili (*University of Udine*)

Board of Directors

Alexis Bugada (*Aix-Marseille University*), Valeria Fili (*University of Udine*), Anthony Forsyth (*RMIT University*), József Hajdu (*University of Szeged*), Shinya Ouchi (*Kobe University*), Daiva Petrylaite (*Vilnius University*), Valeria Pulignano (*KU Leuven University*), Michele Tiraboschi (*Founding Editor - University of Modena and Reggio Emilia*), Anja Zbyszewska (*Carleton University*).

Editorial Board

Labour Law: Emanuele Dagnino (*University of Modena and Reggio Emilia*); Tammy Katsabian (*Harvard Law School*); Attila Kun (*Károli Gáspár University*); Adrian Todoli (*University of Valencia*); Caroline Vanuls (*Aix-Marseille University*). **Industrial Relations:** Valentina Franca (*University of Ljubljana*); Giuseppe Antonio Recchia (*University of Bari Aldo Moro*); Paolo Tomassetti (*University of Bergamo*); Joanna Unterschutz (*University of Business Administration in Gdynia*). **Labour Market Law:** Lilli Casano (*University of Modena and Reggio Emilia*); Silvia Spattini (*ADAPT Senior Research Fellow*). **Social Security Law:** Claudia Carchio (*University of Udine*); Carmela Garofalo (*University of Udine*); Ana Teresa Ribeiro (*Catholic University of Portugal – Porto*); Alma Elena Rueda Rodriguez (*National Autonomous University Of Mexico*). **Anti-discrimination Law and Human Rights:** Erica Howard (*Middlesex University*) Anna Zilli (*University of Udine*). **Labour Issues:** Josua Grabener (*Grenoble Institute of Political Studies*); Habtamu Legas (*Ethiopian Civil Service University*); Francesco Seghezzi (*ADAPT Senior Research Fellow*).

Language Editor

Pietro Manzella (*ADAPT Senior Research Fellow*).

Book Review Editors

Peter Norlander (*Loyola University Chicago*); Malcolm Sargeant (*Middlesex University*).

Scientific Committee of Reviewers

Maurizio Del Conte (*Bocconi University*), Juan Raso Delgue (*University of the Republic*); Richard Hyman (*LSE*); Maarten Keune (*University of Amsterdam*); Felicity Lamm (*Auckland University of Technology*); Nicole Maggi-Germain (*Panthéon-Sorbonne University*); Merle Erikson (*University of Tartu*); John Opute (*London South Bank University*); Michael Quinlan (*University of New South Wales*); Malcolm Sargeant (*Middlesex University*); Jean Michel Servais (*Honorary President of ISLLSS and Former Director of International Labour Office*); Anil Verma (*University of Toronto*).

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 9, No. 2, May-June 2020

@ 2020 ADAPT University Press

Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

The articles and the documents published in the *E-Journal of International and Comparative LABOUR STUDIES* are not copyrighted. The only requirement to make use of them is to cite their source, which should contain the following wording: **@2020 ADAPT University Press**.

Mechanisms implementing Minimum Wage Policies and Compliance with the ILO's Provisions: The Case of Bangladesh's Garment Global Supply Chain

Robayet Ferdous Syed¹

Abstract

The main purpose of this paper is to analyze a comparative implementation mechanism between Minimum Wage (MW) policy drafted under chapter XI of the Bangladesh Labor Act, 2006, and other countries in the world. Another purpose of this study is to remind the State of its obligations under the ILO as well as regional and international instruments to protect workers' rights. In response to the research question, this study shows that present MW provisions under chapter XI of the Bangladesh Labor Act, 2006 were not drafted in accordance with the standard of international instruments adopted under the UN. Furthermore, there are inadequate mechanisms when it comes to implementation of MW provisions under the labor legislation in Bangladesh. Therefore, the present MW policy has not been implemented to its fullest, as required to protect workers in Bangladesh. It is maintained that the ILO's Conventions and Recommendations related to Minimum Wage will be a standard guideline for enacting and implementing MW legislations in Bangladesh.

Keywords – *Minimum Wage; ILO; Bangladesh; Garment Industry; Workers' Rights.*

¹ Assistant Professor of Law, Southeast University, Dhaka, Bangladesh. Email address: sferd096@uottawa.ca.

Introduction

The Bangladesh Garment Manufacturing industry is an organization that warrants global attention. One of the key reasons is that this industry is the world's second largest exporter of ready-made garments, after China. It contributes remarkably to rebuilding the country as well as its national economy by the revenues it earns. Out of 63 million workforces in Bangladesh, nearly four million workers are working in 4,482 RMG (Ready-Made Garments) businesses, and among those workers, eighty percent are women.² Around 20 million people directly and indirectly depend on this industry for their immediate livelihoods.³ Though this manufacturing industry has been playing a vital role in alleviating poverty, reducing unemployment and earning foreign currency, this industry is under attack due to deficiency of MW (Minimum Wage) policy drafted under *chapter XI* of the Bangladesh labor legislation.⁴ In many cases, it has been observed that the MW system in Bangladesh has not functioned according to the ILO's Conventions and Recommendations pertinent to minimum wages. In contrast, many national, regional as well as international instruments have drafted standard MW policy following ILO Conventions and Recommendations. For examples, The American Declaration of the Rights and Duties of Man, 1948⁵ promulgated by the Organization of American States in 1948, includes a provision with respect to "right to work and fair remuneration". Specifically:

Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.⁶

Further, the African Charter on Human and Peoples' Rights, 1986,⁷ also known as the Banjul Charter, 1986, has also recognized a minimum wage policy for workers. According to the Charter, 1986:

² Syed, R. F., '*Minimum wage policy for garment manufacturing workers in Bangladesh*'. (2018), LL M (thesis), School of Law, University of Ottawa, Ontario, Canada.

³ Syed, R. F., '*Theoretical debate on minimum wage policy: a review landscape of garment manufacturing industry in Bangladesh*'. *Asian J Bus Ethics* (2020). <https://doi.org/10.1007/s13520-020-00106-7>.

⁴ *Ibid*,

⁵ American Declaration of the Rights and Duties of Man, 1948. <https://en.wikisource.org/wiki/American_Declaration_of_the_Rights_and_Duties_of_Man>, Accessed on July 12, 2019.

⁶ *Ibid*, art. XIV.

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work⁸

Furthermore, a standard minimum wage policy is recognized by the Council of Europe. The European Social Charter (revised), 1996⁹ has recognized the right of workers for a fair remuneration. In particular,

The right of workers to a remuneration such as will give them and their families a decent standard of living¹⁰.

With respect to the Council of Europe, the Community Charter of the Fundamental Social Rights of Workers, 1989,¹¹ provides that,

All employment shall be fairly remunerated. To this effect, in accordance with arrangements applying in each country: workers shall be assured of an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living ...¹²

Above all, the International Labor Organization (ILO) adopted different Conventions and Recommendation relating to minimum wages, such as:

- The Minimum Wage Fixing Convention 1970, No. 131.¹³
- The Minimum Wage-Fixing Machinery Convention 1928, No. 26.¹⁴
- The Minimum Wage Fixing Recommendation 1970, No. 135.¹⁵

⁷ African Charter on Human and Peoples' Rights, 1986. <http://hrlibrary.umn.edu/instreet/z1afchar.htm>, Accessed on July 12, 2019.

⁸ *Ibid*, art. 15.

⁹ European Social Charter, revised in 1996. <https://rm.coe.int/168007cf93>, Accessed on July 12, 2019.

¹⁰ *Ibid*, art. 4(1).

¹¹ Community Charter of the Fundamental Social Rights of Workers, 1989. <<http://aci.pitt.edu/4629/1/4629.pdf>>, Accessed on July 12, 2019.

¹² *Ibid*, art. 5(i).

¹³ Minimum Wage Fixing Convention 1970, No. 131 with Special Reference to Developing Countries (Entered into force: 29 Apr 1972). Adoption: Geneva, 54th ILC session (22 Jun 1970). <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312276>, Accessed on July 17, 2019.

¹⁴ Minimum Wage-Fixing Machinery Convention 1928, No. 26. Entry into force: 14 Jun 1930. Adopted in Geneva, 11st ILC session (16 Jun 1928). <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL_O_CODE:C026>, Accessed on June 30, 2019.

¹⁵ Minimum Wage Fixing Recommendation 1970, No. 135 with Special Reference to Developing Countries. Adopted in Geneva, 54th ILC session (22 Jun 1970).

- The Minimum Wage-Fixing Machinery Recommendation 1928, No. 30.¹⁶

As a research statement, my contention is that (i) Bangladesh is an active member of the United Nations since the inception of its independence¹⁷; (ii) she has ratified a number of international human rights instruments, including, the Universal Declaration of Human Rights, 1948¹⁸ the International Covenant on Economic, Social and Cultural Rights, 1966¹⁹ as well as International Labor Organization, 1919²⁰ Conventions, and (iii) Bangladesh must honor her obligation in the protection of her workers' rights.

Therefore, this study is an endeavor to assess, evaluate, and analyze the present MW policy in Bangladesh. To what extent has this policy functioned and complied with the standards stipulated under ILO's pertinent Conventions and Recommendations has been the underlying focus of the study. Furthermore, in my discussion, I have referred to standard MW strategies of a number of countries that have been adopted and incorporated in their national legislation with adherence to ILO Conventions and Recommendation.

1. Problem Statement

Bangladesh has no specific separate legislation to deal with the minimum wage system. However, under *chapter XI* (ss. 138 to 149) of the

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:R135:NO>, Accessed on July 3, 2019.

¹⁶ Minimum Wage-Fixing Machinery Recommendation 1928, No. 30. Adopted in Geneva, 11st ILC session (16 Jun 1928). <http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312368,fr:NO>, Accessed on July 12, 2019.

¹⁷ United Nations, "Member States" <<http://www.un.org/en/member-states/>>, Accessed on July 17, 2019.

¹⁸ Universal Declaration of Human Rights, 1948. Adopted on 10 December 1948 (A/RES/217(III)) during the 183rd plenary meeting of the General Assembly. <<https://www.ohchr.org/en/Library/Pages/UDHR.aspx>>, Accessed on July 12, 2019.

¹⁹ International Covenant on Economic, Social and Cultural Rights, 1966. Adopted on 16 December 1966 by General Assembly resolution 2200A (XXI). <<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>>, Accessed on July 12, 2019.

²⁰ International Labor Organization, 1919. <https://www.ilo.org/asia/about/WCMS_377171/lang--en/index.htm>, Accessed on July 17, 2019.

Bangladesh Labor Act, 2006,²¹ also known in Bangla as *Bangladesh Shromo Ain, 2006* (from now on Bangladesh Labor Act, 2006 or BLA 2006) the country has adopted a few provisions relating to minimum wages. Unfortunately, these provisions were not adopted in accordance with the standard of ILO's pertinent Conventions and Recommendations. Also, there is no MW enforcement mechanism under *chapter XI* of the labor legislation in Bangladesh. For example:

- There is no publicity provision to disseminate MW policy in various ways among the illiterate workers so that they can know the required level of minimum wages;
- They have no adequate inspection mechanism to ensure the effective application of the provisions related to minimum wages; the fact which also contradicts Labor Inspection Convention, 1947, No. 81;²²
- There is no adequate penalty, incarceration or other sanctions for breach of the provisions relating to minimum wages;²³
- BLA 2006 has no legal provisions and other appropriate means for enabling workers to reclaim the wages that they were denied to;
- No provisions to defend workers against any victimization;
- The employers' and workers' organizations have no participation policy to enforce MW provisions; and
- The wage definition under the Bangladesh Labor Act, 2006 does not adhere to the Equal Remuneration Convention 1951, No. 100.²⁴

Above all, inequity between the inputs and outcome is a problem in the labor industry of Bangladesh. Therefore, social and economic inequalities between workers and employers are a serious concern in the developing economies like Bangladesh. In particular, workers in the global garment

²¹ Bangladesh Labor Act, 2006, (XLII of 2006). <<https://ogrlegal.files.wordpress.com/2015/11/bangladesh-labour-act-2006-english.pdf>>, Accessed on May 5, 2020.

²² Labor Inspection Convention, 1947, No. 81. The Convention concerning Labor Inspection in Industry and Commerce (Entry into force: 07 Apr 1950). Adopted in Geneva, 30th ILC session (11 Jul 1947), <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL O_CODE:C081>, Accessed on August 5, 2019.

²³ Supra note 21, s. 138-149. Bangladesh Labor Act (2006).

²⁴ Equal Remuneration Convention, 1951, No. 100. Adopted in Geneva, 34th ILC session (29 Jun 1951). Date of entry into force: 23 May 1953. Bangladesh ratify on 28 Jan 1998.

<https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312245>, Accessed on June 17, 2020.

manufacturing industry are deprived in all spheres of life.²⁵ Numerous studies reveal that they work hard²⁶ from dawn to dusk for their survival²⁷ but receive minimum returns²⁸ which are insufficient to meet their basic needs.²⁹ The employers and buyers of the garments products unfairly gain profit, keeping the workers in a disadvantaged situation for which worker cannot meet their fundamental needs. The buyers enter into contract with the garments owners and not necessarily have any stake in ensuring that the owners (employers) of the garments industries would play fair in terms of providing appropriate salaries and benefits to their workers and upholding all the national and international acts and treaties. Hence, the placement of a standard MW policy along with an implementation mechanism will have greater effectiveness to ensure workers' well-being as well as social justice.

2. Research Question

a) To what extent does the present MW policy under the Bangladesh Labor Act follow the ILO's standard compared to other countries in the world?

In addition, another objective is to remind the State of its obligations under the ILO as well as the regional and international instruments to protect workers' rights in Bangladesh.

3. Methodology and Method of the Study

As labor abuse is a common phenomenon experienced in developing countries, my stance would be to use interpretative phenomenological

²⁵ Supra note. 2. Syed, R. F., , (2018). Also, Chowdhury, N. J., & Ullah, M. H. 'Socio-Economic Conditions of Female Garment Workers in Chittagong Metropolitan Area: An Empirical Study'. *Journal of Business and Technology* 5, no. 2 (2010): 53-70.

²⁶ Ahmed, J. U., and Hossain, T. 'Industrial Safety in the Readymade Garment Sector: A Developing Country Perspective'. *Sri Lankan J. Manag* 14, no. 1 (2009): 1-13.

²⁷ Islam, M. S. 'Profit over Life: Industrial Disasters and Implications for Labor and Gender. In *Social Justice in the Globalization of Production*'. Palgrave Macmillan UK (2016): 126-143.

²⁸ Nazneen Ahmed, and Dev. Nathan. 'Improving Wages and Working Conditions in the Bangladeshi Garment Sector: The Role of Horizontal and Vertical Relations'. Published by the University of Manchester, Capturing the Gains. (2014) Working Paper 40, <www.capturingthegains.org> Accessed on August 1, 2018.

²⁹ Supra note 26, Islam, M. S. (2016).

approach³⁰ which creates a room for a comparative study with other countries in regard to the MW policy, rather than come up with a general theory. The purpose or goal of the phenomenological research is to explore the depth, gain insight and understand the complexity inherent in the phenomenon.³¹

I have also adopted descriptive approach in my paper and the goal of this is to systematize or map information, i.e., look at the patterns of laws and develop a taxonomy.

To obtain the best outcome, I have used a mixed approach (phenomenological and descriptive) of qualitative methodology. The strength of this type of research is that it is beneficial for the practitioner and the pertinent stakeholders alike in order to gain new insights. Moreover, the mixed approach of the qualitative methodology can develop an in-depth understanding of how people observe their social realities and how they act within the society.³²

As a method of this study, a 'problem statement' has been developed in the beginning of this manuscript. The problem statement shows that the present minimum wage policy in Bangladesh is substandard. The present minimum rates of wages in the garment manufacturing industry are not adequate to meet the basic necessities of workers and their families.

Based on the problem statement, data were collected from both primary and secondary sources. To get an open-ended scenario, this study focused on MW standard policy adopted by several countries with adherence to many regional and international instruments relating to MW. And then it endeavors to compare the MW policy with regard to garments global supply chain labor industry of Bangladesh.

In response to the research questions, both primary and secondary data have been collected for this study. Among the primary sources, information has been collected from the national labor legislations, litigations, numerous national minimum wage policies, different regional binding instruments, international instruments adopted by the UN and several Conventions and Recommendations relating to MW policy drafted under the ILO. The scholarly literature, i.e., articles, international labor

³⁰ Arslan, M. 'Mechanisms of labor exploitation: the case of Pakistan'. *International Journal of Law and Management* 62, no. 1 (2020): 1-21, available at: <<https://doi.org/10.1108/IJLMA-07-2018-0145>>. Also, Smith, J.A. and Shinebourne, P. 'Interpretative Phenomenological Analysis, *American Psychological Association*'. (2012).

³¹ McLeod, S. A. 'Qualitative vs. Quantitative' (2017). <www.simplypsychology.org/qualitative-quantitative.html>, Accessed on July 19, 2018.

³² Supra note 2, Syed, R. F., (2018).

conferences on minimum wage, published thesis reports, book chapters in edited volumes, legal blogs, relevant theories, published data and figures from quantitative and qualitative research have been analyzed to pursue the research objectives, and research questions.

Table 1: Research Question

Research questions	Method	Primary sources	Secondary sources
a) To what extent does the present MW policy under the Bangladesh Labor Act follow the ILO's standard compared to other countries in the world?	Qualitative	The national labor legislation, litigation, ILO's pertinent Conventions, and Recommendations, different national minimum wage policies, regional binding instruments, and international instruments adopted by UN.	Scholarly literature, published data from quantitative and qualitative research, labor conferences on minimum wage, and theories.

4. Comparative Implementing Mechanism of MW policy which adheres to ILO

With regard to the response of my research question, I cited many evidence on how the international community incorporated MW laws under their national legislation in accordance with the standards stipulated under ILO Conventions and Recommendations and other international instruments relating to MW policy. This testifies the fact that the ILO Conventions and Recommendations and other international instruments relating to MW policy are conclusive and it has insights into workers' welfare. Therefore, it takes me to my following discussion to justify the research question about the MW policy under the ILO Conventions and Recommendations and to what extent has this policy been adopted under the Bangladesh Labor Act, 2006.

There are two Conventions and two Recommendations adopted under the International Labor Organization relating to the MW. The Conventions are as:

- The Minimum Wage Fixing Convention 1970, No. 131, (hereinafter Convention No. 131);³³ and

³³ Supra note 13. Minimum Wage Fixing Convention (1970).

- The Minimum Wage-Fixing Machinery Convention 1928, No. 26, (hereinafter Convention No. 26).³⁴

The Convention No. 131 was designed particularly for developing countries. This Convention was adopted to take into account the needs of workers and their families depending on the level of economic development in a developing country. This Convention also has a Recommendation known as:

- The Minimum Wage Fixing Recommendation 1970, No. 135, (hereinafter Recommendation No. 135).³⁵

The Convention No. 26 also has a Recommendation known as:

- The Minimum Wage-Fixing Machinery Recommendation 1928, No. 30, (hereinafter Recommendation No. 30).³⁶

The Conventions and Recommendations have different standard provisions. For instance;

- The minimum rates of wages which have been fixed shall be mandatory for the employers as well as workers, and the rates are not to be subject to reduction by individual agreement without the authorization of the competent authority or by collective agreement.³⁷
- According to the Convention No. 131, the minimum wages shall have the force of law and failure to apply its provision shall be held liable to appropriate penal or other sanctions.³⁸
- Also, the Recommendation No. 135 reaffirms an appropriate penal or other sanction for non-compliance with the minimum wage provision.³⁹

In this regard, the minimum wage provisions under the Bangladesh Labor Act, 2006 state that:

- The minimum rates of wages that are set by the Minimum Wage Board (MWB) are binding on all employers, and employers are not entitled to pay them less than the set rates.⁴⁰

Further, there is no penalty provision if employers fail to pay the minimum rates of wages set by the MWB. In the absence of appropriate penal or other sanctions, the employers tend to fail to comply with the provisions mentioned under *chapter XI* of the national labor legislation.

³⁴ Supra note 14. Minimum Wage-Fixing Machinery Convention (1928)

³⁵ Supra note 15. Minimum Wage Fixing Recommendation (1970).

³⁶ Supra note 16. Minimum Wage-Fixing Machinery Recommendation (1928).

³⁷ Supra note 14. Art 3.2 (3).

³⁸ Supra note 13. Minimum Wage Fixing Convention (1970).

³⁹ Supra note 15. Minimum Wage Fixing Recommendation (1970).

⁴⁰ Supra note 21, s. 148- 149. Bangladesh Labor Act (2006).

Therefore, in many circumstances, employers do not pay the wage at the rate set by the MWB.

It is also rational to think that in many developing countries like Bangladesh, a threat of incarceration is the effective deterrent against the failure of employers to pay the MW. Therefore, several countries inserted penalty provisions in their labor legislation for breach of MW policy with adherence to ILO. Along with punishment provisions, many countries have taken different initiatives. For example, in Bolivia, the company in question may be closed for non-compliance with the MW provisions; in Hungary, an employer may be prohibited from applying for state subsidies for non-compliance with the MW provisions; in Portugal, the labor legislation prohibits the employers from operations, access to public contracts, and finally publishes violation reports in different media.⁴¹ In addition to a fine, the Russian Federation can suspend the administrative activities of the breaching company for a period of ninety days, and in cases of repeated offences, the government can impose fines or suspend all administrative functions of the organization for a period of up to three years. In Vietnam, depending on the seriousness of the offence, the government can impose administrative penalties, including withdrawal of license for the violation of MW legislation.⁴² According to the General Survey Report on the Minimum Wage Systems,⁴³ some countries publish violation reports for non-compliance with the MW legislation on the website of their Labor Inspectorate or Ministry. Such measures have been approved in the United Kingdom, Quebec, Canada,⁴⁴ and Israel.⁴⁵ Compared to this, unfortunately, there is no enforcement mechanism under the current MW policy in Bangladesh. Government law enforcement agents are reluctant, and entrepreneurs are far from wanting to comply with existing labor provisions. The deficient enforcement

⁴¹ International Labor Conference (2014). The General Survey of the Report on the Minimum Wage System, (103rd Session) Report III (Part 1B). Paragraph 309; International Labor Office, Geneva <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf>, Accessed on July 14, 2019.

⁴² *Ibid*,

⁴³ *Ibid*,

⁴⁴ Labor Standards Commission, (nd). The annual list of offences against labor legislation, and particularly minimum wage violations, is published on the website of the: <<http://www.cnt.gouv.qc.ca/?id=968>>, Accessed on August 5, 2019.

⁴⁵ Ministry of Industry, Trade and Labor. 'Progress Report on the Implementation of the OECD Recommendations: Labor Market and Social Policies'. (June, 2012) Israel, p. 11.

mechanism creates dissatisfaction among workers in Bangladesh,⁴⁶ which contradicts Recommendation No. 135.⁴⁷

The Convention No. 131 as well as Recommendation No. 135 further propose a variety of ways for fixing of minimum wages i.e., by- statute; competent authority; wage boards or councils; labor courts or tribunals; or collective agreements for ensuring satisfactory minimum living wages.⁴⁸ In this regard, the Government of Bangladesh has established the MWB under *chapter XI* of the Bangladesh labor legislation.⁴⁹ But, the MWB has failed to fulfil the obligation mandated under the national labor legislation. Other significant redress under the Convention is that, in order to encounter enforcement barrier of MW legislation there is a need to collect data to carry out a study for the information to be used by MW fixing authority.⁵⁰ Further, the Convention also recommended adjusting the minimum wages from time to time.⁵¹ However, there is no effective mechanism against the enforcement barrier of MW provisions under the Bangladesh Labor Act, 2006.

To fix a rational minimum wage, it should be a general procedure that the representatives from workers and employers have equal voting strength and are equal in number. The wage-fixing authority must also include one or more independent member(s) whose votes would count towards taking effective decisions. Most importantly, the independent member(s) should be a neutral person, and as far as possible has to be appointed after a discussion with the representative of workers and employers is made.⁵² Moreover, where a substantial percentage of women are employed in an establishment, a woman among the workers' representatives should likely be included and independent member(s) may be selected from among the women.⁵³ In response to the provision, the MWB is constituted with a Chairperson along with one representative member from the employers, one representative member from the workers and one other independent member with an equal voting strength for all.⁵⁴

⁴⁶ Supra note 3. Syed, R. F., (2020).

⁴⁷ Supra note 15, para. 1. Minimum Wage Fixing Recommendation (1970).

⁴⁸ Supra note 15, para. 6. Minimum Wage Fixing Recommendation (1970).

⁴⁹ Supra note 21, s. 138. Bangladesh Labor Act (2006)

⁵⁰ Supra note 15, para. 7. Minimum Wage Fixing Recommendation (1970).

⁵¹ Supra note 15, para. 11. Minimum Wage Fixing Recommendation (1970).

⁵² Supra note 16, para. II (a). Minimum Wage-Fixing Machinery Recommendation (1928).

⁵³ Supra note 16, para. II (c). Minimum Wage-Fixing Machinery Recommendation (1928).

⁵⁴ Supra note 21, s. 138 (2) (a) (b) (c) and (d). Bangladesh Labor Act (2006).

What I am arguing in this paper is that the workers' representative cannot play a strong role on behalf of all the workers due to their dishonest and unreliable characteristics. For example, Union leaders maintain a personal relationship with employers to get personal benefits instead of working to establish workers' rights. Therefore, they act against the interest of the workers for which they have been selected, and end up standing by unethical and illegal decisions of the employers with regard to the welfare of the workers. Furthermore, as far as representation of women is concerned, there is no provision to involve them in this representation process under the current MW policy in Bangladesh⁵⁵ despite the fact that about eighty percent of the garment manufacturing workers are women.⁵⁶ Thus, it is irrational not to include women in the decision-making process as it has bearings on their rights. This decidedly makes female workers the most vulnerable in this industry.⁵⁷

For example, they often encounter physical and sexual harassment inside and outside the factories,⁵⁸ but the garments management does not act to ensure their security.⁵⁹ Additionally, maternity benefits are rarely provided to female workers,⁶⁰ and they are also compelled to work on their

⁵⁵ Supra note 21, s. 138-149. Bangladesh Labor Act (2006).

⁵⁶ Syed, R. F., Asaduzzaman M. Asraful I, et al. *'The RMG Sector: Prospects and Challenges and Role of Different Stakeholders'*. A Study Report of the National Human Rights Commission, Bangladesh (2015). <https://www.researchgate.net/publication/281319914_The_RMG_Sector_Prospects_and_Challenges_and_Role_of_Different_Stakeholders>, Accessed on July 16, 2018.

⁵⁷ Lu, Jinky Leilanie. *'Occupational Health and Safety of Women Workers: Viewed in the Light of Labor Regulations'*. Journal of International Women's Studies 12, no. (1) (2011): 68-78. <<http://vc.bridgew.edu/jiws/vol12/iss1/5>>, Accessed on September 19, 2019. Also, Alam M.J., Mamun, M.Z. and Islam, N. 'Workplace Security of Female Garments Workers in Bangladesh'. Social Science Review 21, no. 2 (2004): 191-200.

⁵⁸ Agenda, N. L. *'Wealth and Deprivation: Ready-made Garments Industry in Bangladesh'*. Economic & Political Weekly 46, no. 34 (2011): 23. Also, Khosla, Nidhi. 'The Ready-Made Garments Industry in Bangladesh: A Means to Reducing Gender-Based Social Exclusion of Women?'. Journal of International Women's Studies 11, no. 1 (2009): 289-303. <<http://vc.bridgew.edu/jiws/vol11/iss1/18>>, Accessed on July 31, 2019. Also, Mahmud, S. and N. Ahmed. 'Accountability for Workers Rights' in the Export Garment Sector in Bangladesh'. Bangladesh Institute of Development Studies (2005), Dhaka.

⁵⁹ Niluthpaul, Sarker, Hossain SM Khaled, and Mia Md Kohinur. *'Are the Functional Factors of Human Resource Management Subsisting in the Ready-Made Garments (RMG) of Bangladesh? Theory Conflicts with Reality'*. International Journal of Business and Management 11, no. 7 (2016): 150.

⁶⁰ Afrin, S. *'Labor Condition in the Apparel Industry of Bangladesh: Is Bangladesh Labor Law 2006 Enough?'*. Developing Country Studies 4, no. 11 (2014).

prohibition time.⁶¹ In many cases the female workers are forced to work during night-shifts as well.

The ILO Convention has some mechanisms to ensure that workers and employers are informed about the set minimum wages. The Convention No. 131 emphasizes adequate inspection and effective application of MW provisions.⁶² Similarly, the Recommendation No. 135 specifies taking some measures, including appointing sufficiently trained inspectors with facilities needed to carry out their responsibilities.⁶³ The Convention states that the workers will not be paid less than that of the decided rate, and with those who have been paid less shall be entitled to the balanced sum through judicial or other legislative proceedings, which will be subjected to time limitation according to the law of the land.⁶⁴ The Recommendation No. 30 further suggests taking the following actions so that wages are not paid less than that of the minimum rates which have been fixed by a wage-fixing authority:

“(a) arrangements for informing the employers and workers of the rates in force;

(b) official supervision of the rates actually being paid; and

(c) penalties for infringements of the rates in force and measures for preventing such infringements”.⁶⁵

Moreover, the Labor Inspection (Agriculture) Convention,⁶⁶ No. 129 and the Labor Inspection Convention 1947, No. 81⁶⁷ include a Labor Inspectorate with accountability for securing the enforcement of the legal provisions related to wages as well as conditions of work.

In the context of Bangladeshi MW system, there is no supervision policy to check compliance of the minimum wages set by the MWB. In the absence of a supervision policy under the MW legislation, employers are unlikely to be accountable for both an “overt and a covert or latent

⁶¹ Islam, M. Z. ‘*Maternity Benefits in Bangladesh Labor Law: An Empirical Study on Apparel Industry*’. Manarat International University Studies 4, no. 1 (2015).

⁶² Supra note 13, Art. 5. Minimum Wage Fixing Convention (1970).

⁶³ Supra note 15, para. 14 (b). Minimum Wage Fixing Recommendation (1970).

⁶⁴ Supra note 14, Art. 4 (1) (2). Minimum Wage-Fixing Machinery Convention (1928)

⁶⁵ Supra note 16, para. IV (a) (b) and (c). Minimum Wage-Fixing Machinery Recommendation (1928).

⁶⁶ Labor Inspection (Agriculture) Convention, 1969, No. 129. Entry into force in 19 Jan 1972. Adopted in Geneva, 53rd ILC session (25 Jun 1969), <http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO::P12100_IL_O_CODE:C129>, Accessed on August 6, 2019.

⁶⁷ Supra note 22. Labor Inspection Convention (1947).

failure⁶⁸ and a covert or latent failure in this regard means inadequate training and insufficient supervision.⁶⁹ This may be counted as one of the significant gaps in the MW system in Bangladesh. In the absence of the supervision process, employers tend to fail to comply with the provisions. The Government does have an overall labor inspection policy which is supposed to monitor labor rights violations in different factories, and labor inspectors are also supposed to notify the national authorities about defects and loopholes in labor legislation. Sadly, the present labor inspection system and the inspectors are inadequate in number to supervise millions of workers and thousands of factories.⁷⁰

The study demonstrates that compliance of labor law depends on an effective labor inspectorate, but this industry does not have sufficiently trained inspectors with logistics support; as a result, the inspectors fail to perform their duty comprehensively.⁷¹ Of those inspectors who carry out their functions somewhat satisfactorily, do not stand by the labor legislation due to ignorance of the law. There are also others who take bribes from industry owners and refrain from implementing labor policies.⁷² Therefore, I argue that, in view of the insufficient number of labor inspectors, the government has an obligation to start a national campaign to uphold compliance with the payment of minimum wages, as is the case in countries like Costa Rica, where the government had a similar movement in 2010.⁷³

Furthermore, there is no recovery provision through the judiciary or other legislative proceedings for workers who are paid less than set minimum

⁶⁸ Celia Wells, Derek Morgan and Oliver Quick. 'Disasters: A Challenge for the Law'. WASHBURN L.J. 39, no. 496 (2000): 499-501.

⁶⁹ James Reason. 'Managing the Risks of Organizational Accidents' (Routledge, 1997, p. 10).

⁷⁰ Syed, R. F., Asaduzzaman M., Emdadul. H., et al. 'Security and Safety net of Garments Workers: Need for Amendment of Labor Law'. A study report of National Human Rights Commission, Bangladesh (2014). <http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/348ec5eb_22f8_4754_bb62_6a0d15ba1513/Security%20and%20Safety%20Net%20of%20Garments%20Workers.pdf>, Accessed on August 1, 2019.

⁷¹ Ferdous Ahmed. 'Working Conditions in the Bangladesh Readymade Garments Industry: Is Social Compliance Making a Difference?'. (2011) Ph. D thesis, Faculty of Law and Management, La Trobe University, Australia. Page 116.

⁷² *Ibid*, p. 194. Also, Mondal, A. H. 'Role of the Export Processing Zones in the Industrialization Process of Bangladesh: Lessons for the Future'. Rushidan Islam Rahman (ed.), Performance of the Bangladesh Economy: Selected Issues, Bangladesh Institute of Development Studies (2003), Dhaka.

⁷³ *Supra* note 41, paragraph 304. International Labor Conference (2014).

wages. As a result, the MW provisions under the labor legislation are not implemented.

In contrast, in many countries, their legislation allows labor inspectors to carry out supervision with extensive powers. They are permitted to enter into workplaces spontaneously without prior notice and to conduct inspections; they can carry out inquiry or conduct a review, whichever they may deem appropriate, to ensure that the lawful provisions are upheld. They may also make recommendations to the workers and employers and issue written comments, warnings and violation reports.⁷⁴

Inspectors frequently have discretionary powers as to whether to file an abuse or violation report. In some countries, inspectors have powers to impose penalties in the event of a breach of MW provisions. Romania, Albania, Nicaragua, Burkina Faso, Lithuania, Netherlands, and Nepal are examples.⁷⁵ Similarly, many countries in the world complied with the provisions of ILO Conventions and enacted or amended their national legislation to recover workers' wages which are due to them. According to their legislation, workers have the right to recover the amounts due through tribunals or courts if they were underpaid in respect of the applicable MW. Such instances are witnessed in Indonesia, Kenya, Israel, United States, Viet Nam, Nepal, Netherlands, and Sri Lanka, among others.⁷⁶

The same survey report shows that in Burkina Faso, the court has documented the obligatory amount of MW rates, under the provisions of Convention No. 131 as well as Convention No. 26, and has accordingly awarded workers who were underpaid the difference in their pay.⁷⁷ The report demonstrates that in Honduras, in addition to the wages owed, the workers concerned may seek damages. In Mauritius and Barbados, the courts impose fine on the employers, and in addition to fines, employers are compelled to pay the amounts due to workers who were underpaid.⁷⁸

In some countries, a recovery claim may be placed to an administrative authority. For example, in Barbados, a worker may place a complaint either in person or anonymously by telephone to the Ministry of Labor.⁷⁹

These are all instances of the standard provisions related to MW under the ILO Conventions and Recommendations.

⁷⁴ Supra note 41, paragraph 301. International Labor Conference (2014).

⁷⁵ Supra note 41, paragraph 301. International Labor Conference (2014).

⁷⁶ Supra note 41, paragraph 311. International Labor Conference (2014).

⁷⁷ *Ibid*,

⁷⁸ *Ibid*,

⁷⁹ Supra note 41, paragraph 312. International Labor Conference (2014).

Notwithstanding the fact, the General Survey on Minimum Wage⁸⁰ observed that the recovery of amounts due to the workers who have been underpaid will not be effective for protection of workers if a sanction is not imposed. This observation could be more relevant for developing countries like Bangladesh, where workers are paid less than that of the rate set by the MWB. Therefore, incarceration along with compensation may be a provision for effective application of MW legislation in Bangladesh. As far as standard MW law is concerned, at present, there is no standard provision under the MW law in Bangladesh to recover dues of the workers, let alone imposing sanctions against the employers. Moreover, I have demonstrated that despite gross violations of labor rights, employers have rarely faced legal actions. Rather, workers continue to be marginalized and were compelled to toil at their workstations for long-hours. For instance, they work eight to twelve hours a day, and sometimes seven days a week in order to fulfil the demands of employers and to meet their basic needs, which is clearly labor exploitation.⁸¹

The Convention No. 131 has a provision to disseminate MW policy to workers in various ways.⁸² The Convention also encourages giving publicity of MW provisions in a language that is understood by workers. This helps workers who are illiterate in understanding the provisions of the law and policies initiated by the government. Similarly, the Recommendation No. 135 refers to some measures to ensure effective application of MW provisions.⁸³ In compliance with these policies, many countries have published the MW in their official journals; some governments have published their minimum rates of wages indicating the provisions in force on minimum wages, and information disseminated broadly through other publications.⁸⁴ In many countries, employers are accountable for notifying their workers about the current rates of

⁸⁰ International Labor Conference (1992). The General Survey Report on Minimum Wage, 79th Session. Report III (Part 4 B). Paragraph 359, <[http://ilo.org/public/libdoc/ilo/P/09661/09661\(1992-79-4B\).pdf](http://ilo.org/public/libdoc/ilo/P/09661/09661(1992-79-4B).pdf)>, Accessed on July 12, 2019.

⁸¹ Robinson, C. and Falconer, C. "The Bangladeshi Garment Industry: Mode for Exploitation?". (2013) <https://www.huffingtonpost.co.uk/carolinerobinson/bangladesh-primark-factory_b_3208407.html?guccounter=1>, Accessed on July 30, 2019.

⁸² Supra note 13, Art. 5. Minimum Wage Fixing Convention (1970). Also, Supra note 14, para. 14. Minimum Wage Fixing Recommendation (1970).

⁸³ Supra note 15, para. 14(a). Minimum Wage Fixing Recommendation (1970).

⁸⁴ Supra note 41, paragraph 296-297. International Labor Conference (2014).

minimum wages. They are also responsible for informing their workers about the pertinent terms and conditions of employment.⁸⁵

Furthermore, in compliance with the ILO Conventions, the United Kingdom has established a helpline through which employees can report any abuse at the workstation and seek advice about national MW legislation. In some countries like Belgium, the labor inspectorate has regionalized services and hotlines for people to get information about minimum wages.⁸⁶ According to the same survey report, in several countries including South Africa, Hungary, Vietnam and Poland, the labor inspection services are accountable, among other duties, for giving information on minimum wages.⁸⁷ In Peru, these responsibilities have been imposed on the 'Department of Training and Labor of the Ministry of Labor and Employment Promotion'.⁸⁸

On the contrary, in Bangladesh, the minimum wage rates are published only in the official gazette. The government has no other publication policy or strategy to inform the workers about MW. In absence of a standard publication policy, most of the illiterate workers do not know about the minimum rates of wages. The study reveals that most of the lower grade workers in the garment industry freshly arrives from remote, rural areas in Bangladesh.⁸⁹ Also, the study demonstrated that about sixty percent of the workforce in the garment manufacturing industry is concentrated in the lower grades of the pay scale, i.e., 5, 6 and 7.⁹⁰ They are mostly uneducated, and they have no idea regarding MW policies. The study also shows that the majority of Bangladeshi garment workers are women who come from rural areas and are illiterate or with minimal schooling. Moreover, they are exploited due to their lack of training, technical knowledge, and skills.⁹¹ Further studies reveal that, these women might not even know where to seek assistance.⁹² They have no helpline to take recourse to regarding any issue pertinent to the MW system. On the

⁸⁵ Supra note 41, paragraph 298. International Labor Conference (2014).

⁸⁶ Supra note 41, paragraph 299. International Labor Conference (2014).

⁸⁷ *Ibid*,

⁸⁸ Supra note 41, paragraph 299. International Labor Conference (2014).

⁸⁹ Supra note 28, Nazneen and Dev. Nathan (2014).

⁹⁰ Moazzem, K.G., et al. '*Estimating a Living Minimum Wage for the Ready-Made Garment Sector in Bangladesh*'. Centre for Policy Dialogue (CPD) and Berenschot, the Netherlands. (2013) p. 25.

⁹¹ Kabeer, N. and Mahmud, S. 'Globalization, Gender and Poverty: Bangladeshi Women Workers in Export and Local Markets'. *Journal of International Development* 16, no. 1 (2004): 93-109.

⁹² Supra note 71, p. 205. Ferdous Ahmed (2011).

other hand, employers are also not accountable under the present MW policy to inform the workers about their MW rights; rather, employers are inclined to pay less to the workers than that set by the MWB. It is also pertinent to assume that an illiterate person who has been from rural areas will have no idea about a MW system.

As the common pastime activities of workers include listening to news and music on local FM radio stations, and watching television, the government should seize the opportunity of using radio and television to carry out campaigns in an effort to reach MW information along with an effective publication policy to the garments workers.

In this regard, the General Survey Committee admitted that, for practical reasons, the publication of MW rates in the official gazette is not sufficient to ensure that the workers and employers concerned are aware of the same.⁹³

In compliance with the provisions of the Convention, in Barbados, the Commercial Wage Council takes into account the comparative wage levels of employees in similar employment. And in Japan, provincial minimum wages are fixed taking into account workers' wages in the province. Finally, in Manitoba (Canada) minimum wages are fixed taking into account the comparative wage levels of neighboring provinces.⁹⁴

Though Bangladesh garment industry has been playing a vital role in reducing unemployment in the country,⁹⁵ the workers in this industry receive minimum returns in exchange of their long hours of hard work. Therefore, they still live below the standard.⁹⁶ Coupled with minimum return, non-compliance with the labor law intensifies dissatisfaction among the workers, the fact which results in decrement of work efficiency and creation of unrest in this industry.⁹⁷ In contrast, to reach this objective of reducing poverty, South Africa, Czech Republic, United Republic of Tanzania, Kenya, Armenia and some provinces in Canada, among other nations, amended their national minimum wage legislation.⁹⁸

⁹³ Supra note 80, paragraph 359. International Labor Conference (1992).

⁹⁴ Supra note 41, paragraph 256. International Labor Conference (2014).

⁹⁵ Marilyn, C. & Martha, C. '*Globalization, Social Exclusion and Work: With Special Reference to Informal Employment and Gender*'. (2004) Working Paper No. 20 Policy Integration Department, World Commission on the Social Dimension of Globalization, International Labor Office, Geneva.

⁹⁶ Supra note 27, Islam, M. S. (2016).

⁹⁷ Islam, M, S, & Hossain, M, I. '*Conclusion: Social Justice in the Globalization of Production*'. In *Social Justice in the Globalization of Production* (London: Palgrave Macmillan UK, 2016)

⁹⁸ Supra note 41, paragraph 249. International Labor Conference (2014).

Recommendation No. 135 refers to the importance of employers' and employees' organizations in efforts to protect workers against exploitations.⁹⁹

This role is often carried out by trade unions to protect workers' rights. In Belgium, the social partners, who regulate minimum wages through collective labor agreements, have moral accountability to implement these agreements and to inform their members of their contents.¹⁰⁰ Likewise, in Indonesia, employers' and workers' organizations are associated with the broadcasting of information about the MW among their members. Also, the Palestinian General Federation of Trade Unions (PGFTU) demonstrates that they are trying to establish direct contact with workers through a media campaign on the MW policy. They are organizing demonstrations and distributing leaflets with the aim of raising awareness on issues related to the MW.¹⁰¹ In Pakistan, under their national labor policy of 2010,¹⁰² it planned to set up tripartite monitoring committees at the federal, provincial and district levels to monitor implementation of labor laws.¹⁰³ Hence, it can be summarized that many countries have taken different initiatives to comply with the ILO Conventions and Recommendations so that workers are protected against all forms and manifestations of exploitations. On the contrary, there is no standard policy in Bangladesh to protect workers from exploitation in accordance with the standard of ILO Conventions under the MW law. The workers have been accorded trade union rights by ILO Conventions, but to form or join a trade union is a very complicated area under the present labor law in Bangladesh.¹⁰⁴ As a result, workers in this industry are regularly deprived of the right to form or join a trade union.¹⁰⁵ Unionization is actively discouraged in Bangladesh while trade unions are mostly banned from the export processing zones (EPZ).¹⁰⁶ The study reveals that the ban

⁹⁹ Supra note 15, para. 14 (e). Minimum Wage Fixing Recommendation (1970).

¹⁰⁰ Supra note 41, paragraph 315. International Labor Conference (2014).

¹⁰¹ *Ibid*,

¹⁰² National Labor Policy of Pakistan (2010). <<http://www.ilo.org/dyn/travail/docs/995/Government%20of%20Pakistan%20Labour%20Policy%202010.pdf>>, Accessed on July 23, 2019.

¹⁰³ Supra note 41, paragraph 318. International Labor Conference (2014).

¹⁰⁴ Supra note 21, chapter XIII. Bangladesh Labor Act (2006).

¹⁰⁵ Core Labor Standards Handbook (2006). International Labor Organization, Asian Development Bank. Manila, Philippines.

¹⁰⁶ Dasgupta, S. 'Attitudes towards Trade Unions in Bangladesh, Brazil, Hungary and Tanzania'. International Labor Review 14, no. 1 (2002).

on these activities is a severe violation of labor rights, and leaves a large number of labor and human rights defenders at risk of exploitation, intimidation, harassment, violence, and arrest.¹⁰⁷ The importance of trade unions can best be described as follows:

there is no denying that the low wages and poor working conditions in a large number of RMG units make workers vulnerable to many problems, and without the trade unions, there is no legal means at hand to ensure their interests and rights.¹⁰⁸

Therefore, effective trade union practices are indispensable in the case of Bangladesh and there is a need to strengthen the union for the best interest of the workers' rights.

Recommendation No. 135 also provides measures for the effective application of MW legislation by protecting workers against victimization.¹⁰⁹

In this regard, many countries have taken several initiatives to protect workers. For example, the United States, Canada, and Australia have anti-retaliation legislation to protect workers from victimization or discrimination.¹¹⁰ Similarly, Japan, Philippines, Israel, Malta, and Gambia, have legislation that forbids employers from taking actions to intimidate or punish workers who exercise their rights by lodging complaints to obtain due salaries or benefits. This protection is, however, significant to ensure workers' rights and to get legal solutions if they are paid below the set rates of minimum wages.¹¹¹

In the setting of Bangladesh, there is no anti-retaliation legislation to protect the workers from victimization or discrimination. Rather, workers are unwilling to file lawsuits against the employers if employers fail to pay less than the rate set by the MWB. The reasons for the unwillingness to file lawsuits are that they are not on an equal footing compared to the employers: they are poor and there is no pro bono legal services available for workers. As a result, this lack of litigation fund demotivates them to file lawsuits. Most importantly, judicial biases (employers' personal or other forms of affinity with the judge in court makes way for nepotism in

<<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1564-913X.2002.tb00247.x>>
Accessed on July 31, 2019.

¹⁰⁷ *Ibid*,

¹⁰⁸ *Supra* note 71, p. 42, Ferdous Ahmed (2011).

¹⁰⁹ *Supra* note 15, para. 14 (f). Minimum Wage Fixing Recommendation (1970).

¹¹⁰ *Supra* note 41, paragraph 320. International Labor Conference (2014).

¹¹¹ *Ibid*,

favor of the employers), judicial backlog due to excessive workload, judicial bureaucracy (unnecessary and cumbersome formalities) generate distrust to the litigation process as a whole in Bangladesh. Sometimes judges use employers' political powers for their material gains and professional success, which ultimately creates a lack of trust in the judiciary. Thus, workers are unarmed and reluctant to file lawsuits against the employers. The absence of severe punitive provisions under the present labor law is another factor for this reluctance.¹¹²

In response to the research question, it can be summarized from the above-mentioned comparative analysis that the minimum wage provisions under *chapter XI* of the Bangladesh Labor Act, 2006 hardly comply with the standards of the Convention No. 131, the Recommendation No. 135, the Convention No. 26 as well as the Recommendation No. 30 - all of which have been adopted under the International Labor Organization (ILO).

5. State obligations

One may argue that the provisions under the American Declaration of the Rights and Duties of Man 1948,¹¹³ the African Charter on Human and Peoples' Rights 1986,¹¹⁴ the European Social Charter (revised) 1996,¹¹⁵ the Council of Europe, the Community Charter of the Fundamental Social Rights of Workers 1989¹¹⁶ are all applicable for the setting of their respective regional jurisdictions and thus will not be applicable for Bangladesh.

But I argue that, Bangladesh garment manufacturing business is one hundred percent global supply chain industry, with most of the buyers coming from Europe, America and Africa. Thus the provisions under the regional instruments may be laid down in a way so as to ensure that issues like labor discrimination and adherence to minimum wage are addressed

¹¹² Solaiman, S. M. 'Unprecedented Factory Fire of Tazreen Fashions in Bangladesh: Revisiting Bangladeshi Labor Laws in Light of Their Equivalents in Australia'. *Hofstra Labor & Employment Law Journal* 31, no. 1 (2013). <<http://scholarlycommons.law.hofstra.edu/hlelj/vol31/iss1/3>>, Accessed on June 7, 2019.

¹¹³ *Supra* note 5. American Declaration of the Rights and Duties of Man (1948).

¹¹⁴ *Supra* note 7. African Charter on Human and Peoples' Rights (1986).

¹¹⁵ *Supra* note 9. European Social Charter (revised) [1996].

¹¹⁶ *Supra* note 11. Community Charter of the Fundamental Social Rights of Workers (1989).

and dealt with by the prospective buyers and investors while investing in countries like Bangladesh.

Moreover, Bangladesh has not ratified either Minimum Wage Fixing Convention 1970, No.131¹¹⁷ or Minimum Wage-Fixing Machinery Convention 1928, No. 26.¹¹⁸ Therefore, the provisions drafted under these Conventions will not be applicable in Bangladesh according to art. 8 and art. 7 of these Conventions respectively. But I contend by adopting the view of Anker:

...considering the unequal development of the employment and labor market in all sectors, given the global competitiveness of the readymade garment sector the criteria related to the Convention 131 could be easily implemented in the context of the readymade garment sector.¹¹⁹

Further, the present labor legislation in Bangladesh has some shortages. Thus, the State remains responsible under the following regional and international instruments. For example, Bangladesh is one of the active members of the South Asian Association for Regional Cooperation 1985,¹²⁰ which adopted the “SAARC Social Charter” in 2004. This Social Charter recognizes labor policy for workers. More particularly,

the States parties agree to promote the equitable distribution of income and greater access to resources through equity and equality of opportunity for all.¹²¹

It is mentioned in this manuscript that the inequality between the inputs and outcome is one of the challenges in the developing labor industry. This discrepancy creates social and economic disparities between employees and employers of the labor industry in Bangladesh. So, as an

¹¹⁷ Supra note 13. Minimum Wage Fixing Convention (1970).

¹¹⁸ Supra note 14. Minimum Wage-Fixing Machinery Convention (1928).

¹¹⁹ Anker, Richard. *Estimating a Living Wage: A Methodological Review* (2011). Conditions of Work and Employment Series No. 29. ILO Working Papers 994663133402676, International Labor Organization <http://www.ilo.org/public/libdoc/ilo/2011/111B09_199_engl.pdf>, Accessed on June 19, 2019.

¹²⁰ South Asian Association for Regional Cooperation (1985). <http://www.saarc-sec.org/>, Accessed on July 7, 2020.

¹²¹ SAARC Social Charter (2004), art. II, para. 2(viii), <<https://www.jus.uio.no/english/services/library/treaties/02/2-03/saarc-social-charter.xml>>, Accessed May 4, 2020.

active member of SAARC, the State is obliged to uphold the SAARC Social Charter.

The UDHR further makes provisions of right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.¹²²

Some argue that the UDHR is not a legally binding authority to draft or prescribe a convention or a covenant, but my contention is that the UDHR is a powerful tool in applying diplomatic and moral pressure to governments that violate any of its articles. The UDHR was drafted to define the meaning of 'human rights' and 'fundamental freedoms' mentioned in the UN Charter, which is binding on all of its member states. As a result, UDHR is an important constitutive document of the United Nations, and thus, Bangladesh is liable to follow the provisions of the UDHR.

Furthermore, Bangladesh has ratified the International Covenant on Economic, Social and Cultural Rights (1966), which has specific provisions for standard labor condition as follows:

[The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant].¹²³

Apart from these provisions, the Constitution of Bangladesh has reaffirmed the same policy for the wellbeing of the labor [art. 14; 15 (a) (b) (d); 20 (1) (2) Constitution of Bangladesh 1972].¹²⁴ Therefore, the State is responsible not only by the provision laid down under art. 7 of the International Covenant on Economic, Social and Cultural Rights 1966, but also under the supreme law of the land to uphold and implement them.

¹²² Supra note 18, art. 24. Universal Declaration of Human Rights (1948).

¹²³ Supra note 19, art. 7. International Covenant on Economic, Social and Cultural Rights (1966).

¹²⁴ Constitution of the People's Republic of Bangladesh (1972). Art. 14; 15 (a) (b) (d); 20 (1) (2), <<http://bdlaws.minlaw.gov.bd/act-details-367.html>>, Accessed May 1, 2020.

Additionally, Bangladesh is an active member of Labor Inspection Convention 1947, No. 81. Under articles 12(1), 15(c) and 16 of this Convention, inspections can be carried out without prior notice. But it has been observed that there is no visible provision regarding inspection under the labor law in Bangladesh. Also, it is a concern that at present the Government has only one legal officer at the Directorate of Inspection for Factories and Establishments (DIFE) for the follow-up of labor law violations detected by labor inspectors.¹²⁵ This arrangement is insufficient for labor inspectors to effectively address a volley of labor law violations. Furthermore, Bangladesh has ratified the Equal Remuneration Convention 1951,¹²⁶ No. 100. In its recent annual report submitted to the committee of the Convention, it has been reported that there are invisible pay differences existing in the informal sectors which do not adhere to the Articles 1 to 4 of the Convention that assesses and addresses the gender wage gap. It is also excluded from the scope of application of the Bangladesh Labor Act, 2006.¹²⁷ Article 1(a) of the Convention sets out a broad definition of wage, but the definition under s. 2(45) of the Bangladesh Labor Act, 2006 does not cover Art. 1(a) of the Convention. Therefore, the state must keep in mind that it is also responsible to uphold and implement the ratified Conventional provisions.

6. Conclusion

The labor industry can play a significant role in the development of the national economy. Therefore, a standard labor policy is the *sine qua non* in the context of the global economy. Although, labor law has gradually fallen into a deep philosophical and strategic crisis due to globalization and industrialization,¹²⁸ yet labor law is highly effective in promoting social goals through the compliance of standard wage policy.¹²⁹ Therefore, a

¹²⁵ International Labor Conference (2020). Application of International Labor Standards, 109th Session, Report III (Part A), International Labor Office, Geneva. P. 465 (print) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_736204.pdf> accessed on June 18, 2020.

¹²⁶ *Supra* note 24. Equal Remuneration Convention (1951).

¹²⁷ *Supra* note 125, print p. 368. International Labor Conference (2020).

¹²⁸ Joanne Conaghan, Richard Michael Fischl, & Karl Klare, *Labor Law in an Era of Globalization: Transformative Practices and Possibilities* (Oxford University Press, 2004).

¹²⁹ Freeman, R. B. *Labor Market Institutions without Binders: The Debate over Flexibility and Labor Market Performance* (2005). NBER Working Paper no. 11286 at 12-17, DOI: <10.3386/w11286>, Accessed on Oct. 13, 2019.

standard labor policy with adherence to ILO is indispensable for industries to compete in the global economic landscape.

With regard to developing countries in Asia, India, Pakistan, Sri Lanka, Nepal, Cambodia and China are the competitors of Bangladesh garment global supply chain manufacturing business. So, the potential buyers and investors would inevitably favor those countries who have a standard labor policy that adheres to ILO over the ones like Bangladesh which have a rather sub-standard one. Let me give an example to clarify my point. Imagine that there are two products (product- A and product- B) of the same quality, value and attractiveness. Product- A is manufactured in a country which follows a standard labor policy with adherence to ILO, whereas product- B is manufactured in a country which does not. In this circumstance, a buyer may not place his/ her order in a country where workers are abused due to deficient labor law. Rather, a buyer would do well to place his/ her order in the country where a standard labor strategy with adherence to ILO is in complete effect.

Again, one may argue that due to a comparatively cheap labor cost, product prices are low in Bangladesh compared to other countries in Asia, though the quality, value and attractiveness remains the same. Therefore, buyers might be attracted to place their orders in a country like Bangladesh where they can get the lowest price, disregarding issues like the deficient labor law, labor exploitations etc.

I argue against this stance by saying that in Western countries, buyers' tendency has been to adopt utilitarian business philosophy in their business decision making process. And utilitarianism falls under the exceptionist category, which in turn, is considered as deontological that prefers to rely on moral principles as guidelines of business dealing.¹³⁰

As Western buyers tend to prioritize ethical practices over economic gains, I am certain that they would not place their orders considering the lowest price only. Instead, they would prefer to place their orders in a country which has ethically correct labor practices and has enacted a standard labor policy with adherents to ILO. Today's customers are more concerned and educated about issues like eco-friendliness and adoption of fair-policy as cogs in the overall wheel of circular-economy in respect of manufacture of products. So a company which can boast of its products as having been produced ensuring, for example, labor rights would

¹³⁰ Yongsun Paik, Jong Min Lee and Yong Suhk Pak. 'Convergence in International Business Ethics? A Comparative Study of Ethical Philosophies, Thinking Style, and Ethical Decision-Making Between US and Korean Managers'. *Journal of Bus Ethics* 156, (2017): 839–855. DOI 10.1007/s10551-017-3629-9.

certainly gain market reputation, along with customers' confidence (and money). Employers association may present the case to national and international forums to pressure buying countries to be ethically correct when it comes to choosing countries to place their orders. Therefore, if Bangladesh does not mend its ways and drastically makes a facelift in terms of ensuring labor rights and implementing MW policies and provisions in favor of its demographically disadvantageous workforce, it runs the risk of losing business to other attractive neighbors who are more compliant. Bangladesh being a country that depends heavily on exports of garment products for revenues, can hardly afford such negligence. So it is high time for Bangladesh to address issues and lacunae discussed in this paper with regard to labor welfare, and move forward to comply with pertinent labor laws and regulations to the fullest.

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

For more information about the E-journal and to submit a paper, please send a mail to LS@adapt.it.

