

**BBA 5320**  
**Industrial and Company Law**  
**Study Module**

**স্কুল অব বিজনেস**  
**SCHOOL OF BUSINESS**



**বাংলাদেশ উন্মুক্ত বিশ্ববিদ্যালয়**  
**BANGLADESH OPEN UNIVERSITY**

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# COMPANIES UNDER ACT

# 1

## Unit Highlights

- Lesson 1: Introduction to Companies under Act
- Lesson 2: Memorandum of Association
- Lesson 3: Registration and Alteration of Articles
- Lesson 4: Registration of Memorandum and Articles

## Technologies Used for Content Delivery

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- ❖ WebTV
- ❖ Web Radio
- ❖ Mobile Technology with MicroSD Card
- ❖ BTV Program
- ❖ Bangladesh Betar Program

*The Companies Act 1994 is the primary law governing companies in Bangladesh, establishing rules for their incorporation, management, and winding up. The Act defines companies as incorporated associations with distinct legal identities from their members, encompassing private and public entities with varying registration and operational requirements. Key aspects include provisions for the memorandum and articles of association, management through directors and meetings, disclosure obligations, and procedures for liquidation and foreign company regulations.*



## **Lesson 1: Introduction to Companies under Act**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define the company.
- Identify the reasons to choose Bangladesh for company incorporation.
- Discuss the benefits of private limited company in Bangladesh.
- Explain the company law and its overview.
- State the history of company Act 1994.

### **Introduction**

Bangladesh, like many other jurisdictions, maintains specific regulatory protocols for company registration, both at the outset and throughout the operational phase. The predominant form of business entity in Bangladesh is the private limited liability company, offering a favorable legal structure for entrepreneurs. While Bangladesh does allow for the formation of one-person companies (OPCs), this option is restricted to local individuals and not available to foreign investors. A private limited company in Bangladesh is a separate legal entity and shareholders are not liable for the company's debts beyond the amount of share capital they agree to contribute.

### **Concept of Company**

A company is an artificial person. It exists in the eyes of the law and cannot act on its own. It has to act through a board of directors elected by the shareholders. A company incorporated under 'The Companies Act 1994' has a distinct legal existence quite independent the shareholders.

### **History of Company Act in Bangladesh, 1994**

**Companies Act 1994** (Act XVIII of 1994) governs Company Law in Bangladesh. It received the assent of the President of the People's Republic of Bangladesh on 11 September 1994. Before its enactment in 1994, company law was governed by the Companies Act 1913 which was amended in 1915, 1920, 1926, 1930, 1932, 1936, 1938, 1949 and 1969, 1973 and 1984.

The early history of company law of India was laid in the British Companies Act 1844 on the basis of which the Joint Stock Companies Act 1850, the first company law for the sub-continent, was formulated. This act was based on 'unlimited liability'. In 1857, the Joint Stock Companies Act 1850 was amended with the provision of unlimited liability was replaced by 'limited liability' and the act was renamed as The Companies Act 1857. With the expansion of trade and commerce in the sub-continent, the Companies Act 1857 was amended in 1860, 1866, 1882, 1887, 1891, 1895, 1900 and 1908. The Indian Companies Act 1913 was actually the amended and reformed version of The English Companies Act 1908.

The Companies Act has twelve schedules. The following is a list of them along with the section numbers: Regulation for management of a company limited by shares (sections 2, 17, 18, 86, 367); table of fees to be paid to the registrar (sections 348, 363); particulars of prospectus and reports incorporated in it (section 135); statement in lieu of prospectus (section 141); memorandum and articles of associations of the various types of companies;

summary of share capital and lists of shareholders/directors in accordance with Part One of the Companies Act 1994 (section 36); specimen of company balance sheets and instruction for profit and loss accounts (section 185); and statements to be published by bank and insurance companies, deposits/provident/welfare associations (section 192).

### **Importance of choosing Bangladesh for Company Incorporation**

Bangladesh's competitive business environment, low labour costs, favourable geographical location, abundant natural resources, and supportive policies for foreign investment make it an attractive destination for establishing a business. Whether you are a local entrepreneur or a foreign investor, understanding the legal aspects and registration procedures is crucial for successful company incorporation. This guide provides a detailed, step-by-step overview to help you navigate the process of incorporating a private limited company in Bangladesh with ease. As per companies act 1994, A Public Company, is a Company which can be formed by at least seven persons as members and the membership is open to the public.

### **Benefits of a Private Limited Company in Bangladesh**

**Separate Legal Entity** – A private limited company is recognized as a distinct legal entity, independent of its shareholders.

**Limited Liability** – Shareholders' financial risk is restricted to their investment in the company.

**Perpetual Succession** – The company continues to exist even if ownership changes.

**Legal Protection** – Offers legal safeguards to shareholders against personal liability.

**Ease of Business Operations** – The process of starting, managing, and closing the business is straightforward.

**Structured Framework** – Provides a formal business structure suitable for startups and growing ventures.

**Minimal Paid-Up Capital Requirement** – No significant capital is needed to establish the company.

**Ease of Share Transfer** – Shares can be transferred among members without complex procedures.

### **Company law in Bangladesh**

Companies Act 1994 (Act XVIII of 1994) governs company law in Bangladesh. It received the assent of the President of the People's Republic of Bangladesh on 11 September 1994. Before its enactment in 1994, company law was governed by the Companies Act 1913 which was amended in 1915, 1920, 1926, 1930, 1932, 1936, 1938, 1949 and 1969, 1973 and 1984.

### **An overview of the Company Act 1994**

The Companies Act 1994 has 11 parts. These are:

**Part-I** contains the preliminary aspects of the act including the short title of the act, commencement and extent, definitions of various terms.

**Part- II** is concerned with formulation and incorporation of companies, including bank companies, and memorandum of association for various types of companies, articles of association, general provision for registration of memorandum and articles of association, associations not for profit, and companies limited by guarantee.

**Part-III** mainly narrates the rules for share capital, registration of unlimited company as limited, and the limited liability of directors. This part states the rules and procedures for distribution of share capital of companies and the provisions for reduction of share capital.

**Part-IV** states the framework for regulating the management and administration of companies, the requirements for having a registered office of a company with a distinct name at a specific place, the provisions for penalties for non-disclosure of name, and the way to show the authorized, subscribed and paid up capital of companies. It contains the procedures and rules for holding meetings of companies, provisions and procedures for appointment of company directors, their responsibilities, rights and obligations, powers, tenure, loans to and from a company, and their relationship with the managers, and managing agents of a company.

**Part-V** of the act provides details of the mode and methods of winding up, liabilities of company directors, owners of the shares and their successors, procedures and options of winding up, ordinary and extraordinary power of courts to be involved in the winding up process, appointment of official liquidator and their powers and duties, settlement of debts of companies and transfer and distribution of assets and liabilities.

**Part-VI** deals in matters relating to the registered office/s of companies; appointment of registrar/s by the government; their powers and responsibilities, payment of registration fees and submission of returns and documents to registrar by the companies.

**Part-VII** interprets the rules of application of the act to companies formed and registered under former Companies Acts.

**Part-VIII** identifies and defines the companies capable of being registered, the various aspects required for registration and the power to substitute memorandum and articles for deed of settlement, etc.

The main concern of **Part-IX** of the act is the procedure for winding up of unregistered companies. This part explains the meaning of unregistered companies; procedure for their winding up; power to stay or restrain proceedings; suits stayed on winding up order; directions as to property in certain cases; and the status of provisions of this part cumulative.

The contents of **Part-X** include the requirements for establishing foreign companies in Bangladesh, rules for regulating them, preparation, maintenance, audit and submission of their accounts to the host country regulators; notice for closure of foreign companies in Bangladesh; and restrictions on sales and offer for sale of shares.

Finally, **Part-XI** is supplemental and relates legal proceedings, offences, etc. The subject matters elaborated in it are cognisance of offences, application of fines, power to require limited company to give security for costs, and penalty for wrongful withholding of property.

## **Amendment of the Companies Act, 1994: Key Changes in 2020**

### **1. Introduction of One Person Company (OPC)**

The One Person business (OPC), which permits a single natural person to form a limited liability business, was a significant reform. This action was taken to promote individual entrepreneurship and make it easier for sole proprietors to conduct business legally. A minimum paid-up capital of BDT 25 lakh to BDT 5 crore is required of the OPC. The sole shareholder is also required to choose a nominated director who will assume control in the event of the shareholder's incapacity or death.

### **2. Delegation of Powers outside Bangladesh**

When Section 129 was adopted, it allowed businesses to assign authority to people or organisations outside of Bangladesh if their operations needed to be carried out outside of the nation's boundaries. This clause expands the reach of international company and makes international operations easier.

### **3. Abolition of Common Seal Requirement**

The requirement that businesses use a common seal was eliminated by the amendment. In accordance with worldwide norms, this modification sought to modernise business procedures and lessen administrative hassles.

### **4. Clarification on Share Transfer Process**

Clearer guidelines about the share transfer process, including the registration processes, were made available by the amendment. The goal of this explanation was to decrease share transfer conflicts and streamline operations.

### **5. Digitalization of Corporate Records**

In order to support electronic filings and records, the Companies Act was amended, encouraging corporate governance to become more digital. The goal of this modification was to improve business processes' accessibility, efficiency, and transparency.

### **6. Enhanced Corporate Governance**

The amendment included measures to improve corporate governance, such as more stringent rules for financial disclosures, shareholder rights, and board meetings. The goals of these actions were to safeguard the interests of stakeholders and promote accountability.

## **Review Question:**

1. What is company?
2. Why choose Bangladesh for company incorporation.
3. Discuss the benefits of private limited company in Bangladesh.
4. Explain the company law and its overview.
5. State the history of company Act 1994.

## Lesson 2: Memorandum of Association

### Learning Objectives

Upon completion of this lesson, you will be able to:

- Define the MOA.
- Identify the types of Memorandum of Association.
- Discuss the advantages and disadvantages of Memorandum of Association.
- Identify the various Laws regarding MOA in Bangladesh.

### Introduction:

The Memorandum of Association is a crucial document for companies, outlining their structure and purpose. It serves as the foundation for a company's existence and is required for registration. The Memorandum of Association is a foundational legal document for companies, establishing their existence and basic operational framework. It serves as a public record, accessible to anyone, providing transparency regarding a company's fundamental characteristics and setting its initial legal boundaries.

### Memorandum of Association (MOA)

A Memorandum of Association or MOA is a legal document that a company prepares during registration and formation. It is a company's basic charter; it defines the organization's relationship with shareholders and specifies the business's objectives. Companies can only conduct activities mentioned in this document.

### Types of MOA

The following are the different types of MOA:

- **Table A:** In the case of companies with share capital.
- **Table B:** Applicable for limited-by-guarantee companies that do not have share capital.
- **Table C:** When share capital and a guaranteed limit, a company.
- **Table D:** Applicable for unrestricted companies with no share capital.
- **Table E:** When an unrestricted company has a share capital.

### Advantages and Disadvantages of MOA

Let us look at the benefits and limitations of an MOA.

#### 1. Advantages of MOA

The following are the advantages of a memorandum of associations:

- First, the document explains the company's scope of activities and objectives. This is beneficial, especially for prospective investors, who can make investments based on such information.
- It provides all details of the company's structure.

Another key benefit of an MOA is that it helps anyone dealing with the company, including creditors and investors, to know about the organization's powers and rights.

#### 2. Disadvantages of MOA

The following are the disadvantages of an MOA:

- First, preparing this legal document can be time-consuming.
- Suppose an organization specifies in its MOA that it will only conduct business activities in the information technology industry. The activities will be deemed void if it carries out operations in the infrastructure industry

## **Incorporation of Company Memorandum**

### **According to the The Company Act, 1994 Section 5: Memorandum of Association**

Mode of forming incorporated company. Any seven or more persons or, where the company to be formed will be a private company, any two or more persons associated for any lawful purpose may, be subscribing their names to a memorandum of association and otherwise with the requirements of this Act in respect or registration form an incorporated company, with or without limited liability, that is to say, either—

- (a) a company limited by shares, that is to say, a company having the liability of its member limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them; or
- (b) a company limited by guarantee, that is to say, a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company on the event of its being wound up; or
- (c) an unlimited company, that is to say, a company having no limit on the liability of its members.

### **Section 6: Memorandum of company limited by shares**

In the case of a company limited by shares.-

- (a) the memorandum shall state.—
  - (i) the name of the company, with "limited" as the last word in its name;
  - (ii) The address of the registered office;
  - (iii) the objects of the company, and, except in the case of trading companies, the territories to which they extend;
  - (iv) that the liability of the members is limited;
  - (v) the amount of share capital with which the company proposes to be registered, and the divisions thereof into shares of a fixed amount;
- (b) each subscriber of the memorandum shall take at least one share;
- (c) each subscriber shall write opposite to his name the number of shares he takes.

### **Section 7. Memorandum of company limited by guarantee.**

In the case of a company limited by guarantee —

- (a) the memorandum shall state—
  - (i) the name of the company, with "limited" as the last word in its name.
  - (ii) the address of the registered office;
  - (iii) the objects of the company, and, except in the case of trading companies, the territories to which they extend;
  - (iv) that the liability of the members is limited;

- (v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the charges and expenses of winding up, and for adjustment of the right of the contributories among themselves, such amount as may be required, not exceeding a specified amount;
- (b) if the company has a share capital—
  - (i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
  - (ii) each subscriber of the memorandum shall take at least one share;
  - (iii) each subscriber shall write opposite to his name the number of shares he takes.

**Section 8. Memorandum of unlimited company. In the case of an unlimited company**

- (a) the memorandum shall state-
  - (i) the name of the company;
  - (ii) the address of the registered office of the company;
  - (iii) the objects of the company and, except in the case of trading companies, the territories to which they extend.
- (b) if the company has a share capital-
  - (i) each subscriber of the memorandum shall take at least one share;
  - (ii) each subscriber shall write opposite to his name the number of shares he takes.

**Section 10. Restriction on alteration of memorandum.**

- (1) A company shall not alter the conditions on continued in its memorandum except provisions is made in the Act.
- (2) Only those provisions which by any other specific provision contained in this Act, are required to be stated in the memorandum of the company concerned shall be deemed to be the conditions contained in its memorandum.
- (3) Other provisions contained in the memorandum, including those relating to the appointment of director, managing agent or manager may be altered in the same manner as the articles of the company, but if there is any express provision in this Act permitting the alteration of such provisions in any other manner, they may also be altered in such other manner.
- (4) All reference to the articles of a company in this Act shall be construed as including references to the other provisions contained in its memorandum as referred to in sub-section (3).

**Review Question:**

1. Define the MOA.
2. Identify the types of Memorandum of Association.
3. Discuss the advantages and disadvantages of Memorandum of Association.
4. Identify the various Laws regarding MOA in Bangladesh.

## **Lesson 3: Registration and Alteration of Articles**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Identify the law related to registration and application.
- Examine the law related to any alterations.

### **Introduction**

For a company to be recognized as a legal entity with rights and duties to carry out commercial operations, it must be properly registered under the Companies Act, 1994. Choosing a company name, writing the Memorandum and Articles of Association, selecting directors and shareholders, acquiring the relevant paperwork, and submitting the application to the Registrar of Companies are just a few of the processes involved in the registration process.

### **Registration**

Registration refers to the formal process of recording information or data in an official system, often for legal or administrative purposes. Company registration in Bangladesh is a popular query from foreign investors. Furthermore, people want to know the period of business formation and the costs for its incorporation in Dhaka, Bangladesh. Therefore, this article will focus on guidance on how to register a private limited company in Bangladesh and complete the steps of company formation in Bangladesh.

### **Alteration of Articles**

Any Company which intends to make any change to the Article of Association of its company can alter its Article by way of addition, deletion, modification, substitution, or in any other way, only if it wants by taking approval of the shareholders through special resolution.

### **According to the Company Act Section: 17. Registration of Articles.**

- (1) A company limited by guarantee and an unlimited company shall, and a company limited by shares may have an articles of association herein provision shall be made for regulating the affairs of the company; and the article shall be signed by the subscribers of the memorandum and be registered together with the memorandum.
- (2) Articles of association may adopt all or any of the regulations contained in Schedule I, and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, 66, 71, 78, 79, 80, 81, 82, 95, 97, 105, 108, 112, 113, 114, 115, and 116 contained in that Schedule : Provided that regulations 78, 79, 82, 81, and 82 shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company : Provided further that regulation, 108 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year, shall be shown in the profit and, loss account, unless the company in general meeting shall determine otherwise.

- (3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.
- (4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered; and on the basis of such number the Registrar shall determine the fees payable on registration.

### **Section 18. Application of Schedule I.**

In the case of a company limited by shares and registered after the commencement of this Act, if articles not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Schedule I, those regulations shall, so far as applicable be the regulations of the company in the same manner and to the same extent as if they were contained in the duly registered articles.

### **Section 19. Form and signature of articles.**

Articles shall (a) be printed; (b) be divided into paragraphs numbered consecutively; (c) be signed by each subscriber of the memorandum, who shall add his address and description in the presence of at least two witness who shall attest the signature.

### **Section 20. Alteration of articles by special resolution.**

Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter, exclude from or add to its articles: and any alteration, exclusion or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration, exclusion or addition by special resolution.

### **Section 21. Effect of alteration in memorandum or articles.**

Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the due on which he becomes, member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability is at that date to contribute to the share capital of, or otherwise to pay money to the company.

### **Section 22. Effect of memorandum and articles.**

- (1) The memorandum and articles shall when registered bind the company and the members hereof to the same extent as if they respectively had been signed by each member and contained a convenient on the part of each member his heirs and leal representatives to observe all the provisions of the memorandum and of the articles subject to the provisions of this Act.
- (2) All money payable by any member to the company under the memorandum or articles shall be a debt one from him to the company.

### **Section 23. Registration of memorandum and articles.**

- (1) The memorandum and articles if any shall be filed with the Registrar who if satisfied that the requirements of this Act have been complied with shall retain and register them within thirty days from the date of their receipt and in the event of refusal he shall communicate the grounds within ten days after that period to the company.
- (2) An person on being aggrieved by a refusal of the Registrar under sub-section (1) may make an appeal to the Government within thirty days of the receipt of the refusal order.
- (3) The petition of appeal shall be accompanied by a treasury challan showing of a fee of two hundred fifty taka to be credited under the head of account specified in this behalf.
- (4) The decision of the Government in an appeal under this section shall be final.

### **Section 24. Effect of registration.**

- (1) On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated and in the case of a limited company that the company is limited.
- (2) From the date of incorporation mentioned in the certificate of incorporation the subscribers of the memorandum together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

### **Section 27. Alteration of memorandum of articles to be noted in every copy.**

- (1) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.
- (2) If, where any such alteration has been made the company at any time after the date of the alteration, issues any copies of the memorandum or article which are not in accordance with the alteration, it shall be liable to a fine not exceeding one hundred taka for each copy so issued, and every officer of the company who is knowingly and willfully in default shall also be liable to a like penalty.

### **Section 21. Effect of alteration in memorandum or articles.**

Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he becomes, member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability is at that date to contribute to the share capital of, or otherwise to pay money to the company.

### **Section 22. Effect of memorandum and articles.**

- (1) The memorandum and articles shall when registered bind the company and the members hereof to the same extent as if they respectively had been signed by each

member and contained a convenient on the part of each member his heirs and legal representatives to observe all the provisions of the memorandum and of the articles subject to the provisions of this Act.

- (2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

**Review Question:**

1. Identify the law related to registration and application.
2. Examine the law related to any alterations.

## **Lesson 4: Registration of Memorandum and Articles**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Identify the law related to registration of memorandum and articles.
- Examine the laws related to share.

### **Introduction**

The memorandum of association may be accompanied by the articles of association, which is a document which prescribes the internal regulations of the company. All limited liability company is validly constituted in accordance with the Companies Act 1994 once the memorandum and articles of association and the relevant documentation for the incorporation of the said company are presented to the Registrar for registration. On the registration of the mentioned documentation, the Registrar shall issue a certificate of registration which in itself is proof that the company has come into the existence and is authorized to commence businesses as from the date of registration indicated in the certificate. Furthermore, the registration of the company by the Registrar shall be without prejudice to any other license or other authorization as may be required in respect of the activities carried on by the company under any other law.

### **According to the company Act 1994 Section 23. Registration of memorandum and articles.**

- (1) The memorandum and articles if any shall be filed with the Registrar who if satisfied that the requirements of this Act have been complied with shall retain and register them within thirty days from the date of their receipt and in the event of refusal he shall communicate the grounds within ten days after that period to the company.
- (2) An person on being aggrieved by a refusal of the Registrar under sub-section (1) may make an appeal to the Government within thirty days of the receipt of the refusal order.
- (3) The petition of appeal shall be accompanied by a treasury challan showing of a fee of two hundred fifty taka to be credited under the head of account specified in this behalf.
- (4) The decision of the Government in an appeal under this section shall be final.

## **SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED AND UNLIMITED LIABILITY OF DIRECTORS**

**Distribution of Share Capital Section 30. Nature of shares.** (1) The shares or other interests of any member a company shall be deemed to be movable property and shall be transferable in manner provided by the articles of the company. (2) Each share in a company having a share capital shall be distinguished by the appropriate number.

**Section 31. Certificate of shares or stock.** A certificate under the common seal of the company specifying any shares or stock held by any member shall be prima facie evidence of the title of the member to the shares or stock therein specified.

**Section 32. Definition of Member.** (1) Every subscriber of the memorandum of company shall be deemed to have agreed to become a member of the company and on its registration shall be entered as a member in its register of members. (2) Every other person who agrees

to become a member of a company, and whose name is entered in its register of members shall be a member of the company.

**Section 34. Register of member** Every company shall keep in one or more books of register of its members, and enter therein the following particulars:--

- (i) the name and addresses, and the occupations, if any of the members;
- (ii) in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;
- (iii) the date at which each person was entered in the register as a member;
- (iv) the date at which any person ceased to be a member.

**Section 38. Transfer of shares**

- (1) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided where such application is made by the transferor no registration shall in case of partly paid shares be affected unless the company gives notice of the application to the transferee and subject to the provisions of sub-section (7) the company shall, unless objection is made by the transferee two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.
- (2) For the purpose of sub-section (1), notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.
- (3) It shall not be lawful for the company to register a transfer of share in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with script: Provided that, where it is proved to the satisfaction of the directors of the company that an instrument of transfer signed by the transferor and transferee has been lost, the company may, if the directors think fit, on an application in writing made by the transferee and bearing the stamp required by an instrument of transfer register the transfer on such terms as to indemnity as the directors may think fit.
- (4) If a company refuses to register the transfer of any shares or debentures the company, shall, within one month from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal.
- (5) If default is made in complying with sub-section (4) of this section, the company shall be liable to a fine not exceeding one hundred taka for every day during which the default continues and every director, manager secretary other officer who is knowing by a party to the default shall, be liable to a like penalty.
- (6) Nothing in sub-section (3) shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.
- (7) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares.

### **Section 39. Certification of transfer.**

- (1) The certification by a company of any instrument of transfer of shares in, or debentures of, the company, shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transfer named in the instrument of transfer, but not as a representation that transferor has complete title to the shares or debentures.
- (2) Where any person acts on the faith of an erroneous certification made by a company negligently, the company shall be under the same liability to him as if the certification has been made fraudulently.
- (3) For the purposes of this section- (a) an instrument of transfer shall be deemed to have certificated if it bears the words 'certificate lodged" or words to the like effect; (b) the certification of an instrument of transfer shall be deemed to be made by a company, if- (i) the person issuing the certificated instrument is a person authorised to issue such instruments of transfer on the company's behalf; and (ii) the certification is signed by any officer or servant of the company or any other person authorised to certificate transfers on the company's behalf, or if a body corporate has been so authorised by any officer or servant of that body corporate; (c) a certification shall be deemed to be signed by any person if it purports to be authenticated by his signature, unless it is shown that the signature was placed there neither by himself nor by any person authorised to use the signature for the purpose of certificating transfers on the company's behalf.

### **Section 55. Effect of conversion of shares into stock.**

Where a company having a share capital has converted any of its shares into stock and filed notice of the conversion with the Register all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be filed with the Registrar shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares herein before required by this Act.

### **Conclusions:**

The formation of a company under the Companies Act, 1994 involves a systematic process, ensuring compliance with legal and financial regulations. By understanding these stages, students and aspiring entrepreneurs can gain valuable insights into starting a business effectively. Whether it's the promotion stage, the registration stage, or the final step of commencing business, each phase is essential for establishing a successful company.

### **Review Questions:**

1. Discuss the law related to registration of memorandum and articles.
2. Explain the laws related to share.

# DIRECTORS

# 2

## Unit Highlights

- Lesson 1: Directors
- Lesson 2: Managing Agent

## Technologies Used for Content Delivery

- ❖ BOUTUBE
- ❖ BOU LMS
- ❖ WebTV
- ❖ Web Radio
- ❖ Mobile Technology with MicroSD Card
- ❖ BTV Program
- ❖ Bangladesh Betar Program

*Under the Bangladesh Companies Act, 1994, directors manage the company on behalf of shareholders, while a managing director is a director with substantial management powers, often appointed by agreement or resolution. Directors are appointed and removed according to the Act, typically by shareholders, and are legally entrusted with the company's business operations. The Act outlines their duties, the appointment process, their removal, and defines the distinction between a regular director and a managing director who holds significant management authority, distinguishing this from routine administrative acts.*



## Lesson 1: Directors

### Learning Objectives

Upon completion of this lesson, you will be able to:

- Define the concept and meaning of director.
- Describe the obligation and appointment of director.
- Discuss the qualification and disqualifications of director.
- Explain the valid and removal of a director.

### Introduction

A board of directors (BoD) is the governing body of an organization and is responsible for setting the organization's overall strategic direction, selecting and managing its top executives, and protecting the interests of its stakeholders. When the organization is a publicly listed company, the board of directors is elected by company shareholders. A public company must have a board of directors. Many private companies and nonprofit organizations have a board of directors, often called a board of trustees.

### Concept of Director

The term **director** is a title given to the senior management staff of businesses and other large organizations. It is in common use with two distinct meanings, the choice of which is influenced by the size and global reach of the organization and the historical and geographic context. Further to this, the term is also used in reference to various technical (legal) definitions specific to corporate governance legislation in individual countries.

Thus, a director can be any of:

- A person appointed to act as the most senior manager of the company itself (managing director) or of a key function (finance director, operations director, etc.), in which case the title is analogous to and replaces the "C-Suite" titles, this might be considered as the British English meaning of the word.
- A person from a group of managers who leads or supervises a particular area of a company, which might be considered to be the American English meaning of the word.
- A person holding a "directorship" in a legal sense, who has specific legal duties and responsibilities for management of the company which they have been appointed to the board of director,

Within companies that use this term in the latter (American English) sense it would be normal to have directors spread throughout different business functions or roles (e.g. director of human resources). In such a case, the director usually reports directly to a vice president or to the CEO directly in order to let them know the progress of the organization. Large organizations may also have "assistant" or "deputy" directors. In this context, *Director* commonly refers to the lowest level of executive in an organization, but many large companies use the title of *associate director* more frequently.

When used by a firm which uses the title director in the British English sense, being termed as an "executive director" would generally imply that the holder is appointed to the board of directors in a legal sense, and holds significant responsibility and/or a financial stake in the business. By contrast in the American English context "executive director" is roughly equivalent to vice president or senior director in some businesses.

Such companies may also have "regional" and/or "area directors", with regional director titles tending to be used by companies that are organized by location and have their departments under that, indicating near total responsibility for the operations for their particular country.

## **Directors**

### **According to the Company Act Sec. 90 Directors Obligatory:**

- (1) Every public company and a private company which is a subsidiary of a public company shall have at least three directors.
- (2) Every private company other than a private company mentioned in sub-section (1) shall have at least two directors;
- (3) Only a natural person may be appointed a director.

### **Section 91. Appointment of directors:**

- (1) Notwithstanding anything contained in the articles of a company—
  - (a) the subscribers of the memorandum shall be deemed to be the directors of the company until the first director are appointed.
  - (b) the directors of the company shall be elected by the members from among their number in general meeting; and
  - (c) any casual vacancy occurring among the directors may be filled in by the other directors but the person the appointed shall be a person qualified to be elected a director under clause (b) and shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.
- (2) Notwithstanding anything contained in the articles of a company other than a private company not less than one third of the whole number of directors shall be persons whose period of office is liable to determination at any time by retirement of directors rotation.

### **Section 94. Disqualifications of directors –**

- (1) A person shall not be capable of being appointed director of a company, if –
  - (a) he has been found to be of unsound mind by a competent court and the finding is in force; or
  - (b) he is an undischarged insolvent; or
  - (c) he has applied to be adjudicated as an insolvent and his application is pending; or
  - (d) he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or
  - (e) he is a minor.
- (2) A company may in its articles provide additional grounds for disqualification of a director.

**Section 95. Notice of meetings:—**Notice of every meeting of the Board of Directors of a company shall be given in writing to every director for the time being in Bangladesh and at his address in Bangladesh.

**Section 96. Meeting of Board:**--In the case of every company a meeting of its Board of Directors shall be held at least once in every three and at least four such meetings shall be held in every year.

**Section 97. Qualification of Director:**

- (1) Without prejudice to the restrictions imposed by section 92, it shall be the duty of every director to hold qualification share to be specified in the articles and, if he is not already qualified, he shall obtain his qualification within sixty days after his appointment, or such shorter time as may be fixed by the articles.
- (2) If, after the expiration of the period mentioned in sub-section (1) any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding two hundred taka for every day between the expiration of the said period and the last day on which it is proved that he acted as a director (both days inclusive).

**Section 98. Validity of act of director**

The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification: Provided that nothing in this section shall be deemed to give validity to act done by a director after the appointments of such director has been shown to be invalid.

**Section 106. Removal of directors**

- (1) The company may by extraordinary resolution remove any share-holder director before the expiration of his period of office and may by ordinary resolution appoint another person in his stead and the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected director.
- (2) A director so removed shall not be re-appointed a director by the Board of Directors.

**Review Questions:**

1. Define the concept and meaning of director.
2. Describe the obligation and appointment of director.
3. Discuss the qualification and disqualifications of director.
4. Explain the valid and removal of a director.

## **Lesson 2: Managing Agent**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Explain the duration of managing agent.
- Describe the conditions applicable to managing agents.
- Discuss the remuneration of managing agent.
- State the restriction on managing agent's powers of management.

### **Introduction:**

A managing agent is a professional or company responsible for overseeing the management of a property or a group of properties on behalf of the owner or landlord.

### **Definition of managing Agent**

According to the company Act 1994 “managing agent” means a person, firm or company by whatever name called, who or which is entitled to the management of the whole affairs and business of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement”.

### **Key Responsibilities of managing agent:**

**Property Management:** Handles day-to-day operations, including maintenance, tenant relations, and rent collection.

**Financial Management:** Prepares budgets, manages expenses, and provides financial reporting to property owners.

**Compliance:** Ensures adherence to local laws, regulations, and property management standards.

**Marketing:** Promotes the property to attract tenants and maintain occupancy rates.

### **According to the Company Act 1994 Section 116. Duration of appointment of managing agent.**

- (1) No managing agent shall, after, the commencement of this Act, be appointed to hold office for a term of more than ten years at a time and no managing agent shall hold office for more than twenty years.
- (2) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company, a managing agent of a company appointed before the commencement of this Act shall not continue to hold office after the expiry of ten years from such commencement unless than reappointed thereto.
- (3) A managing agent whose office is terminated by virtue of the provisions of sub section (2) shall, upon such termination, be entitled to a charge upon the assets of the company by way of indemnity for all liabilities or obligations property incurred by the managing agent on behalf of the company subject to existing charges and encumbrances, if any.

- (4) The termination of the office of a managing agent by virtue of the provisions of subsection (2) shall not take effect until all money payable to the managing agent for loans made to or remuneration due up to date of such termination from company are paid.
- (5) Nothing in this section shall apply to a private company which is not the subsidiary company of a public company.

### **Section 117. Conditions applicable to managing agents.**

Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company.

- (a) a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same manner as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs of the company and the offence is non-bailable within the meaning of the provisions of the code of Criminal Procedure, 1898 (Act V of 1898): Provided that where the managing agent is a firm or company and offence committed by a member of such firm or a director or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company: Provided further that a managing agent shall not be liable to be removed under the provisions thereof if the offending member, director or officer as aforesaid is expelled or dismissed by the managing agent within thirty days from the date of his conviction or if his conviction is set aside, on appeal;
- (b) the office of a Managing agent shall be deemed to be vacant if he is adjudged insolvent;
- (c) a transfer of his office by a managing agent is a firm, a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be a partner of the managing agent's firm;
- (d) a charge or assignment of his remuneration of any part thereof affected by a managing agent shall be void as against the company:
- (e) if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be there upon determined without prejudice, however, to the right of the managing agent to recover any moneys recoverable by the managing agent from the company: Provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself, the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management; and
- (f) the appointment of a managing agent, the removal of managing agent and variation of a managing agent's contract of management shall not be valid unless approved by the company by a resolution at a general meeting of the company notwithstanding anything to the contrary in section 104: Provided that nothing contained shall apply to the appointment of a company's agent made prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment of such managing agent are set forth therein.

### **Section 119. Remuneration of managing agent.**

- (1) Where a company appoints a managing agent, it shall, in the documents of appointment specify the following:
  - (a) the remuneration of the managing agent which shall be a sum based on fixed percentage of the net annual profits of the company; and
  - (b) a minimum payment, in the case of absence or inadequacy of profits, together with office allowance.
- (2) Any stipulation for remuneration additional to, or in any form other than, the remuneration specified in sub-section (1) shall not be binding on the company unless sanctioned by a special resolution of the company.
- (3) For the purpose of this section net profits' means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoing, depreciation, bounties, depreciation, bounties or subsidies received from Government or from a public statutory body profits by way of premium of the whole or part of the undertaking of the company, but without any deduction in respect of income-tax or super-tax, or any other tax or duty on income or for expenditure by way of intersection debentures or otherwise on capital account or on account of any sum which may be set aside in each year to of the profits for reserve of any other special fund.
- (4) This section shall not apply to a private company except a private company which is the subsidiary company of a public company or to any company whose principal business is the business of insurance.

### **Section 123. Restriction on managing agent's powers of management.**

A managing agent shall not exercise, in respect of any company of which he is a managing agent, a power to issue debentures or, except with the authority of the directors and within the limits fixed by them, a power to invest the funds of the company and any delegation of any such powers by a company to a managing agent shall be void.

### **Conclusions**

The Board of Directors plays a pivotal role in a company's governance, entrusted with significant powers under the Companies Act, 1994. These powers enable the Board to manage and guide the company effectively. However, the Board must exercise these powers responsibly, transparently, and in the best interests of the company and its stakeholders. Adhering to fiduciary duties, ensuring compliance with legal requirements, and maintaining ethical standards are essential for the Board to contribute to the company's long-term success and sustainability.

### **Review Question:**

1. Explain the duration of managing agent.
2. Describe the conditions applicable to managing agents.
3. Discuss the remuneration of managing agent.
4. State the restriction on managing agent's powers of management.

# PROSPECTUS

# 3

## Unit Highlights

- Lesson 1: Prospectus
- Lesson 2: Issues and Registration of Prospectus

## Technologies Used for Content Delivery

- ❖ BOUTUBE
- ❖ BOU LMS
- ❖ WebTV
- ❖ Web Radio
- ❖ Mobile Technology with MicroSD Card
- ❖ BTV Program
- ❖ Bangladesh Betar Program

*A prospectus is a concise overview of the full prospectus document, designed to provide investors with a quick understanding of a company's public offering and key information without requiring them to read the entire document. It highlights crucial details such as the company's business, financial position, the securities being offered, terms of the issue, risks involved, and contact information, enabling investors to make informed investment decisions.*



## Lesson 1: Prospectus

### Learning Objectives

Upon completion of this lesson, you will be able to:

- Define prospectus.
- Describe the types of prospectus.
- Discuss the importance of prospectus.
- Explain the dating of prospectus.
- State the matters to be stated and reports to be set out in prospectus.

### Introduction:

A prospectus is a legal document that a company issues to the public giving details of an offer for investment. It is usually published when the company offers bonds, stocks, mutual funds, or other investment offers.

### Meaning Prospectus

A prospectus is a formal document provided by the company when a company wants to sell its securities or bonds to the public, it contains all the necessary details about the sale that includes the company's financial position, the number of shares offered and types of securities being offered, etc.

### Types of Prospectus

The prospectus of a company may be of various types as follows:

1. **Red Herring Prospectus** – The entity has to file it with the registrar before issuing the offer for investment. Generally, this document does not contain details like quantity or the price of the security offered.
2. **Abridged Prospectus** – It is a brief description or a summary stating all the materially helpful details about the offer that are filed with the registrar. It is necessary to include all documents used for purchasing the security that the company issues.
3. **Deemed Prospectus** – The document becomes deemed if it contains details of the company's investment offer to the general public.
4. **Shelf Prospectus** – A document that any bank, company, or financial institution distributes to the public containing details of more than a single type of investment.

### Importance of Prospectus

The importance of prospectus guidelines is as follows:

1. **Invitation for investment** – It is a document issued when the organization plans to make investment offers to the public. Thus, it is an invitation to invest.
2. **Company Information** – It gives details of the company's workings, mission, vision, financial condition, management information, etc.
3. **Authentic document** – It is a genuine and legal document that investors can rely upon because it should be filed with the SEC.

4. **Identifies investment risks** – This document clearly states the risks involved in the offer by giving details related to securities offered and the company's financial information, its debt in the market, the repayment capacity, etc.
5. **Help make decisions** – The prospectus regulation helps investors make informed decisions regarding whether it is worth investing in this company, particularly in the offer that the company makes, based on its financial condition and the purpose for which capital is being raised.
6. **Helps company raise capital** – This document is a source of information about the offer made for fundraising. Thus, it helps increase the money intended for company use, like expansion, capital expenditure, existing debt repayment, etc.

**According to the company Act of Bangladesh following laws are related to prospectus:**

**Section 134. Dating of prospectus.** A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

**Section 135. Matters to be stated and reports to be set out in prospectus.**

- (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of a company shall state the matters and set out the reports specified in parts I and II respectively of schedule III; and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule.
- (2) Where an applicant for shares or debentures of a company is required to accept a condition which has the effect of waiving the compliance with any of the requirements of this section, or which purports to affect him with notice of any contract document of matter not specifically referred to in the prospectus, such condition shall be void.
- (3) No person shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a prospectus which complies with the requirements of this section: Provided that this sub-section shall not apply if it is shown that the form of application was issued either —
  - (a) in connection with a bonafide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
  - (b) in relation to shares or debentures which were not offered to the public.
- (4) If any person acts in contravention of the provision of sub-section (3) he shall be punishable with fine which may extend to five thousand taka.
- (5) A director or other person responsible for the prospectus shall not incur any liability by reason of any non compliance with, or contravention of, any of the requirements of this section if
  - (a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or
  - (b) he proves that the non-compliance or contravention arose from an honest mistake of the fact on his part; or

- (c) the non-compliance or contravention in respect of matters which in the opinion of the court dealing with the case, were in material or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused : Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Part I of Schedule III, unless it is proved that he had knowledge of the matters not disclosed.
- (6) This section section not apply
  - (a) to the issue to existing members or debentures holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debenture will or will not have the right to renounce in favour of other persons :
  - (b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in of quoted on a recognised stock exchange; but subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.
- (7) Nothing in this section shall limit or diminish any liability which any person may incur under any other law or under this Act apart from this section.

### **Mistakes in Preparing a Prospectus**

A corporation will formally invite the public to subscribe for its shares or debentures by issuing a prospectus. It needs to be meticulously written in order to adhere to legal requirements, give correct information, and safeguard the business and investors. Errors may result in financial losses, reputational harm, and legal responsibilities.

#### **1. Inaccurate or Misleading Information**

**Problem:** Providing inaccurate, inflated, or insufficient information about the business, its financial situation, or its future prospects.

**Example:** Exaggerating market position, concealing liabilities, or inflating revenue or profitability.

**Consequence:** Investors may base their judgements on inaccurate information, which could result in legal action under the Companies Act or securities laws.

#### **2. Omitting Material Information**

**Problem:** Leaving out important information that investors require in order to make wise selections.

**Examples:**

- Past or pending legal disputes
- Contingent liabilities
- Changes in management

**Consequence:** Non-disclosure can result in lawsuits, penalties, and reputational damage.

### 3. **Ambiguous or Vague Statements**

**Problem:** Using terms that are too general, unclear, or open to interpretation.

**Example:** Phrases like “expected high returns” or “guaranteed profits” without supporting data.

**Consequence:** Misinterpretation by investors and potential allegations of misleading advertising.

### 4. **Non-Compliance with Legal Requirements**

**Problem:** Ignoring the specific provisions of the Companies Act 1994 (Bangladesh) or regulatory guidelines.

**Examples:**

- Not including the required auditor’s report or financial statements
- Failing to get approval from the Registrar of Joint Stock Companies and Firms (RJSC)

**Consequence:** Prospectus may be declared invalid, and directors may be held liable.

### 5. **Incomplete Financial Information**

**Problem:** Failing to provide clear, audited, or detailed financial statements.

**Examples:**

- Not showing profit & loss account, balance sheet, or cash flow statement
- Omitting notes explaining significant accounting policies or debts

**Consequence:** Investors cannot accurately assess risk; regulatory authorities may reject the prospectus.

### 6. **Overly Optimistic Projections**

**Problem:** Presenting future earnings, growth, or market share projections that are unrealistic or not supported by evidence.

**Example:** Claiming 50% revenue growth without data or market analysis.

**Consequence:** Can be considered fraudulent or misleading, exposing the company to legal liability.

### 7. **Ignoring Risk Factors**

**Problem:** Not clearly disclosing risks associated with the company, industry, or market.

**Examples:**

- Economic downturns
- Market competition
- Regulatory changes

**Consequence:** Investors may feel misled; legal actions for non-disclosure may follow.

### 8. **Conflicts of Interest**

**Problem:** Not disclosing relationships between directors, underwriters, or promoters that may affect investor decisions.

**Example:** Director loans or related-party transactions not mentioned.

**Consequence:** Legal scrutiny and possible investor distrust.

**Review Questions:**

1. Define prospectus.
2. Describe the types of prospectus.
3. Discuss the importance of prospectus.
4. Explain the dating of prospectus.
5. State the matters to be stated and reports to be set out in prospectus.

## **Lesson 2: Issues and Registration of Prospectus**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Explain expert's consent to issue of prospectus containing statement by him.
- Describe the registration of prospectus.
- Discuss the interpretation of provisions relation to prospectus.
- Explain the restriction on alteration of terms of prospectus or statement in lieu of prospectus.

### **Section 137: Expert's consent to issue of prospectus containing statement by him.**

A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by and expert may be issued, if

- (a) he has given his written consent to the issue thereof , with the statement included in the form and context in which it is included, and has not withdrawn such consent before the delivery of a copy of the prospectus for registration; and
- (b) another statement that he has given and has not withdrawn his consent as aforesaid appear's in the prospectus.

### **Section138. Registration of prospectus.**

- (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named there in as a director or proposed director of the company, or by his agent authorised in writing.
- (2) The copy of the prospectus delivered to the Registrar for registration under sub section (1) shall have endorsed thereon or attached thereto
  - (a) any consent of the issue of the prospectus required by section 137 from any person as an expert; and
  - (b) in the case of a prospectus issued generally, also
    - (i) a copy of every contract specified in clause 16 of part of a Schedule III or in the case of a contract not reduced into writing a memorandum giving full particulars thereof; and
    - (ii) where the persons making any report required by Part II of that Schedule Have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause persons setting out the adjustments and giving the reasons therefore.
- (3) Every prospectus to which sub-section
  - (1) applies shall, on the face of it
    - (a) state that a copy has been delivered for registration as required by this section;
    - (b) specify any document required by this section to be endorsed on or attached to the copy so delivered; and
    - (c) a list of statements included in the prospectus.

- (4) The Registrar shall not register a prospectus unless the requirements of section 134, 135, 136 and 137 and sub-section (1), (2) and (3) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.
- (5) No Prospectus shall be issued more than ninety days after the date on which a copy there of is delivered for registration, and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.
- (6) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having been endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly and willingly a party to the issue of the prospectus, shall be punishable with the fine which may extend to five thousand taka.

### **Section 143. Interpretation of provisions relation to prospectus.**

- (1) For the purposes of the provisions relating to prospectus
  - (a) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included; and
  - (b) where the omission from a prospectus of any matter is calculated to mislead, the prospectus shall be deemed in respect of such omission to be a prospectus containing untrue statement.
- (2) For the purposes of section 145, 146 and clause (a) of sub-section (1) of this section, the expression "included" when used with reference to a prospectus, means included in the prospectus itself or contained in any report of memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

### **Section 144. Restriction on alteration of terms of prospectus or statement in lieu of prospectus.**

A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except with the approval of, or except under an authority given by, the company in general meeting.

### **Review Questions:**

1. Explain expert's consent to issue of prospectus containing statement by him.
2. Describe the registration of prospectus.
3. Discuss the interpretation of provisions relation to prospectus.
4. Explain the restriction on alteration of terms of prospectus or statement in lieu of prospectus.



# WINDING UP

# 4

## Unit Highlights

- Lesson 1: Winding up
- Lesson 2: Laws Related to Winding up
- Lesson 3: Laws Related Winding up Provision
- Lesson 4: Laws Related to Joint Stock Company

## Technologies Used for Content Delivery

- ❖ BOUTUBE
- ❖ BOU LMS
- ❖ WebTV
- ❖ Web Radio
- ❖ Mobile Technology with MicroSD Card
- ❖ BTV Program
- ❖ Bangladesh Betar Program

*The winding-up of a company is a legal process by which a company's existence is formally ended, and its assets are distributed to settle liabilities. It is a critical phase in the life of a company, typically occurring when the company ceases operations or is unable to continue its business. The procedure for winding up a company in Bangladesh is governed by the Companies Act of 1994 and follows specific legal provisions aimed at ensuring the protection of creditors' and stakeholders' interests. This article explores the various aspects of company winding up in Bangladesh, including the legal framework, grounds for winding up, the types of winding-up, the process involved, and key legal considerations.*



## **Lesson 1: Winding up**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define winding up.
- Identify how winding up work.
- Discuss the types of winding up.
- Distinguish between winding up and bankruptcy.
- Examine the differences between winding up and dissolution.

### **Introduction:**

Winding up of the Company is referred to as the legal mechanism of permanently shutting down a company. It is a procedure by which the Company ends its existence as a separate legal entity after filing for dissolution under the supervision of a liquidator.

### **Concept of winding up**

Winding up is the process of liquidating a company. It involves selling off assets, paying creditors, and distributing remaining assets to owners. There are two main types of winding up: compulsory and voluntary. This article explores the differences between these types, the distinction from bankruptcy, real-world examples, and the legal consequences of not dissolving a business. Additionally, it delves into the time frame for winding up a business.

### **How winding up works**

Winding up a business is a meticulously regulated process, governed by corporate laws, and often outlined in a company's articles of association or partnership agreement. It can occur through either compulsory or voluntary means and applies to both publicly and privately held companies.

### **Types of winding up**

#### **Compulsory winding up**

Compulsory winding up involves a legal mandate from a court to cease the company's operations and initiate the liquidation process. The court appoints a liquidator to oversee the sale of assets and the distribution of proceeds to creditors.

Typically, this court order is prompted by legal action from the company's creditors, who have often gone unpaid. In some instances, compulsory winding up serves as the concluding step in a bankruptcy proceeding, where creditors aim to recover the owed funds. However, it's important to note that in many cases, the company may not possess sufficient assets to fully satisfy all its debts, leading to economic losses for the creditors.

#### **Voluntary winding up**

Voluntary winding up, on the other hand, is initiated by a company's shareholders or partners through a resolution. In cases of insolvency, shareholders may opt for winding up to avoid bankruptcy and personal liability for the company's debts. Even if the company remains solvent, shareholders might decide to wind up the business when they believe that

its objectives have been fulfilled, and it's time to cease operations and distribute the company's assets.

In some scenarios, market conditions may paint a bleak future for the business. If stakeholders foresee insurmountable challenges, they may pass a resolution to wind up the company. A subsidiary may also undergo winding up, usually due to its declining prospects or inadequate contributions to the parent company's bottom line.

### **Winding up vs. bankruptcy**

While winding up is often the result of bankruptcy, the two processes are distinct. Bankruptcy is a legal proceeding wherein creditors seek access to a company's assets for liquidation to settle debts. Bankruptcy can enable a company to emerge as a new entity, free from debt, and often smaller in scale.

Conversely, once the winding-up process begins, the company can no longer conduct business as usual. Its sole focus shifts to liquidating and distributing assets. Ultimately, at the end of this process, the company is dissolved and ceases to exist.

### **Real-world examples**

A real-world illustration of winding up is Payless, a shoe retailer that filed for bankruptcy in 2017. The company subsequently closed hundreds of stores and repaid substantial debts under court supervision. Although it emerged from bankruptcy, it ultimately began winding up in 2019, closing its remaining stores and liquidating assets.

Other well-known American companies, such as Circuit City, RadioShack, Blockbuster, and Borders Group, faced financial distress before filing for bankruptcy and opting for liquidation.

### **Difference between winding up and dissolution**

Winding up and dissolution are sequential steps in the process of closing a business. Winding up entails ceasing business operations, selling assets, paying off creditors, and distributing assets to owners. Once this process is complete, dissolution follows. Dissolution marks the formal cessation of the company's legal existence, involving the preparation of documentation to terminate the business as a legal entity.

### **Legal consequences of not dissolving a business**

Failing to legally dissolve a business can result in tax liabilities and penalty fees. These financial obligations can accumulate even if the business is no longer operational or generating revenue. When a business decides to cease operations and completes its winding up, it must also undergo the legal process of dissolution.

### **How long does it take to wind up a business**

Winding up a business involves multiple stages, beginning with a two to three-month entry into the liquidation process. The duration of the liquidation process can vary, lasting anywhere from a few months to a year, contingent on the time required to sell off assets.

**Review Questions:**

1. Define winding up.
2. How does winding up work?
3. Discuss the types of winding up.
4. Distinguish between winding up and bankruptcy.
5. What are the differences between winding up and dissolution?

## **Lesson 2: Laws Related to Winding up**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define mode of winding up.
- How winding up by court?
- Company when deemed unable to pay its debts?
- When winding up may be referred to district court?
- State the transfer of winding up from one district court to another?

### **Introduction:**

Winding up refers to the ending of operations of a business by settling debts, the liquidation of assets, and distributing the remaining proceeds to the shareholders of the partnership or corporation. Winding up occurs just before the complete dissolution of a corporation.

### **According to the Company Act 1994 WINDING UP Preliminary Section 234.**

#### **Mode of winding up.**

- (1) The winding up of a company may be either. (i) (ii) by (iii) subject to the supervision of the Court. the voluntary; Court; or
- (2) The provisions of this Act with respect to winding up shall apply, to the winding up of a company in any of these modes, unless anything contrary appears.

### **Winding up by Court**

#### **Section 241. Circumstances in which company may be wound up by Court.**

A company may be wound up by the Court; if

- (i) if the company has by special resolution resolved that the company be wound up by the Court; or
- (ii) if default is made in filing the statutory report or in holding the statutory meeting; or;
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; or
- (iv) if the number of members is reduced, in the case of a private company below two, or, in the case of any other company, below seven; or (v) if the company is unable to pay its debts; or
- (v) if the Court is of opinion that it is just and equitable that the company should be wound up.

#### **Section 242. Company when deemed unable to pay its debts.**

- (1) A company shall be deemed to be unable to pay its debts
  - (i) if a creditor, by assignment or otherwise, to whom the company is indebted for a sum exceeding five hundred take then due, has served on the company, by causing the same to be delivered by registered post or otherwise at its registered office, a demand under his hands requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

- (ii) if execution or other process issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
  - (iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.
- (2) The demand referred to in clause (i) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by an agent or legal advisor duly authorised on his behalf, or in the case of a firm, if it is signed by such agent, or by a legal adviser or by any one member of the firm on behalf of the firm.

**Section 243. Winding up may be referred to District Court.**

Where the High Court Division makes an order for winding up of a company under this Act it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court, and thereupon such District Court shall for the purpose of winding up the company, be deemed to be "the Court" within the meaning of this Act and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court Division.

**Section 244. Transfer of winding up from one District Court to another.**

If during the progress of a winding up in a District Court it is made to appear to the High Court Division that the same may be more conveniently prosecuted in any other District Court, the High Court Division may transfer the same to such other District Court, and thereupon the winding up shall proceed in such other District Court, and at any stage of such proceedings, that Division may withdraw the proceedings from any of such District Courts and dispose of it.

**Review Questions:**

1. Define the mode of winding up.
2. Describe the process of winding up of a company by court.
3. Explain company when deemed unable to pay its debts?
4. Explain when winding up may be referred to district court?
5. State the transfer of winding up from one district court to another?

## **Lesson 3: Laws Related Winding up Provision**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define provisions as to applications for winding up.
- Explain the effect of winding up.
- Identify the commencement of winding up by court.
- State the court that may grant injunction.
- Explain the powers of court on hearing petition.
- State the circumstances in which company may be wound up voluntarily.
- Elaborate the commencement of voluntary winding up.
- Identify the common challenges of winding up.

### **Introduction:**

The legal process of winding up a company is a critical and final step in the lifecycle of a corporate entity. It is the procedure through which a company's existence is brought to an end, and its assets are redistributed. This process is not only a legal necessity but also a strategic maneuver to ensure that the interests of all stakeholders are considered and addressed. From the perspective of the shareholders, winding up represents the moment when they can realize their investments, albeit often at a loss. For creditors, it is the stage where they can enforce claims and seek to recover debts. Employees look to this process for the payment of outstanding wages and severance.

### **Section 245. Provisions as to applications for winding up.**

An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributors, or by all or any of those parties, together or separately or by the Registrar: Provided that

- (a) a contributory shall not be entitled to present a petition for winding up a company, unless
  - (i) either the number of members is reduced in the case of a private company, below two, or, in the case of any other company, below seven; or
  - (ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;
- (b) the Registrar shall not be entitled to present a petitions for winding up a company
  - (i) except on the ground from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 195 or, in a case falling within section 204, it appears that the company is unable to pay its debts; and
  - (ii) unless the previous sanction of the Government has been obtained to the presentation of the petition: Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard.

- (c) a petition for winding up of a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except by a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;
- (d) the Court shall not give a hearing to a petition for winding up of a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court.

**Section 246. Effect of winding up order.**

An order for winding up of a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

**Section 247. Commencement of winding up by Court.**

A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

**Section 248. Court may grant injunction.**

The Court may, at any time after the presentation of the petition for winding up of a company under this Act and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceedings against the company and may also pass other similar order upon such terms as the Court thinks fit.

**Section 249. Powers of Court on hearing petition.**

- (1) On hearing the petition, the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order which, it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to, or in excess of, those assets or that the company has no assets.
- (2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.
- (3) Where the Court makes an order for the winding up of a company, it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver.

## **Voluntary Winding Up**

**Section 286. Circumstances in which company may be wound up voluntarily**

- (1) A company may be wound up voluntarily —
  - (a) when the period, if any, fixed for the duration of the company by the articles expires, or the even, if any occurs, on the occurrence of which articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

- (b) if the company resolves by special resolution that the company be wound up voluntarily;
  - (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.
- (2) The expression "resolution for voluntarily winding up" when used hereafter in this Part means a resolution passed under clause (a), clause (b), or clause (c) of this section.

### **Section 287. Commencement of voluntary winding up.**

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up. 288. Effect of voluntary winding up on status of company.--When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry in its business, except so far as may be required for the beneficial winding up thereof: Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

### **Common Challenges in Winding Up**

**Settling Outstanding Debts and Liabilities** – It might be difficult to make sure all creditors are paid and debts are settled, particularly if the business has several loans or outstanding claims.

**Asset Valuation and Liquidation** – It can take a lot of effort and may not always yield the anticipated results to accurately value and sell business assets in order to pay off debts.

**Legal and Regulatory Compliance** – Completing the Companies Act of 1994's legal formalities, such as obtaining court approval or submitting documents to the Registrar, can be difficult and time-consuming.

**Disputes Among Shareholders or Creditors** – The winding-up process may be delayed by disputes over the allocation of remaining assets or the resolution of obligations.

**Taxation and Statutory Dues** – There may be administrative difficulties in making sure that all taxes, tariffs, and statutory payments are accurately determined and paid before closing.

### **Review Questions:**

1. Define provisions as to applications for winding up.
2. Explain the effect of winding up.
3. Explain how commencement of winding up by court.
4. Explain when court may grant injunction.
5. Explain the powers of court on hearing petition.
6. State the circumstances in which company may be wound up voluntarily.
7. Elaborate the commencement of voluntary winding up.

## **Lesson 4: Laws Related to Joint Stock Company**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define Joint Stock Company.
- Explain the requirements for registration of joint stock companies.
- State the requirements for registration of companies other than joint-stock companies.
- Describe the authentication of statement of existing companies.

### **Section 355. Definition of joint stock company.**

- (1) For the purposes of this part, so far as it relates to registration of companies limited by shares, a joint-stock company means
  - (a) a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also fixed amount, or held of and transferable as stock or divided and held partly in one way and partly in the other; and
  - (b) formed on the principle or having only for its members as the holders of those shares or that stock and for no other person.
- (2) Such a company, when registered with limited liability under this Act, shall be deemed to a company limited by shares.

### **Section 356. Requirements for registration of joint stock companies.**

Before the registration in pursuance of this part of joint stock company, there shall be delivered to the Registrar the following documents that is to say —

- (a) a list showing the names, address, and occupation of all persons who on a day named in the list not being more than six clear days before the day of registration were members of the company with the addition of the shares or stock held by them respectively ditinsmithing in the case where the shares are numbered, each share by its number;
- (b) a copy of deed of settlement contract of copartner or other instrument constituent or regulation the company; and
- (c) if the company is intended to be registered as a limited company, a statement specifying the following particulars, that is to say
  - (i) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;
  - (ii) the number of shares taken and the amount paid on each share;
  - (iii) the name of the company with the addition of the word "Limited" as the last word thereof; and
  - (iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

### **Section 357. Requirements for registration of companies other than joint-stock companies.**

Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar.

- (a) a list showing the names, address and occupations of the directors of the company; and

- (b) a copy of deed of settlement, contract of copartner or other instrument constituent or regulating the company; and
- (c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

### **Section 358. Authentication of statement of existing Companies.**

The list of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

### **Conclusions**

Winding up a company is a significant undertaking that marks the end of a business's journey. This final act is not just a legal process but also a period of reflection for the stakeholders involved. It's a time to look back on what has been achieved, the challenges faced, and the knowledge gained. From the perspective of the company directors, winding up can be seen as a moment to evaluate the decisions that led to this point. It offers a chance to consider the effectiveness of the Articles of Association, which serve as a guide and governance framework throughout the company's lifecycle. For employees, it might be a period of transition and uncertainty, but also an opportunity for growth and new beginnings.

### **Review Questions:**

1. Define Joint Stock Company.
2. Explain the requirements for registration of joint stock companies.
3. State the requirements for registration of companies other than joint-stock companies.
4. Describe the authentication of statement of existing companies.

# EMPLOYMENT AND CONDITION OF SERVICE

# 5

## Unit Highlights

- Lesson 1: Introduction to Employment and Conditions of Service
- Lesson 2: Employment and Conditions of Service
- Lesson 3: Leave from Work
- Lesson 4: Right for Compensation
- Lesson 5: Discharge from Service

## Technologies Used for Content Delivery

- ❖ BOUTUBE
- ❖ BOU LMS
- ❖ WebTV
- ❖ Web Radio
- ❖ Mobile Technology with MicroSD Card
- ❖ BTV Program
- ❖ Bangladesh Betar Program

*The Bangladesh Labour Act, 2006 (BLA 2006), supplemented by the Labour Rules 2015, provides a comprehensive framework for employment and conditions of service, covering wages, working hours (8 hours/day, 48 hours/week, with limited overtime), leave (weekly, festive, annual), and maternity benefits (16 weeks leave with pay for qualifying women). It outlines procedures for termination and resignation, establishes welfare funds, mandates occupational safety, and regulates trade unions and dispute resolution mechanisms, aiming to protect worker rights and promote fair labor practices.*



## **Lesson 1: Introduction to Employment and Conditions of Service**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define the conditions of employment.
- Explain the important for HR, business owners, and team Leaders of understanding condition of employment.
- Describe the types of conditions of employment.
- Identify the conditions of employment influence workplace productivity.
- Describe the conditions of employment.
- Explain the conditions of employment specified.

### **Introduction:**

Conditions of employment, also known as terms of employment refer to the rules, requirements, and benefits associated with a specific job. Conditions of employment can include everything from an employee's salary to their expected work hours to a company's dress code.

Conditions of employment are typically specified in a written employment contract between an employer and employee as well as in a company's employee handbook. Different jobs within a company may have different terms of employment, but most businesses also have a set of company-wide policies that apply to all employees.

### **Definition of Conditions of Employment**

Conditions of employment refer to the agreed-upon terms that govern the relationship between an employer and employee. These conditions include important aspects such as salary, work hours, job duties, benefits, leave policies, and the terms for contract termination.

Essentially, the conditions of employment meaning ensures that both parties are clear on their rights and obligations, providing a structured framework that supports legal compliance and workplace fairness.

Clear and well-defined conditions help set expectations, promote transparency, and minimize conflicts, ensuring smoother operations and a more engaged workforce.

These conditions could be announced in the work offer, but they must be discussed in hiring interviews and be clearly specified in the contract, even if we are dealing with a temporary employee.

### **Understanding Conditions of Employment Important for HR, Business Owners, and Team Leaders**

Understanding conditions of employment is crucial for HR professionals, business owners, and team leaders, as it directly impacts employee satisfaction, compliance, and workplace productivity. Here's why:

**Clarity in Roles and Expectations:** Clearly defining the conditions of employment ensures that employees understand their responsibilities, work hours, and job expectations, which reduces confusion and enhances productivity.

**Legal Compliance:** For HR and business owners, knowing what is conditions of employment helps ensure that contracts and policies comply with labor laws, minimizing the risk of legal disputes.

**Improving Employee Mental Health:** A well-defined set of conditions of employment in the workplace helps reduce stress by providing clarity around pay, benefits, and work conditions, contributing to a healthier work environment and better employee mental health.

**Promoting a Positive Work Environment:** When conditions of employment are transparent and fair, it fosters trust and reduces conflicts, creating a more harmonious work environment.

**Informed Decision-Making:** HR and leaders can make better decisions regarding hiring, promotions, and disciplinary actions when they are fully aware of the contractual and legal conditions governing employment.

## **Types of Conditions of Employment**

Conditions of employment can be categorized into several key types that impact various aspects of the workplace and employee experience. Each type plays a significant role in defining the employer-employee relationship and ensuring a smooth, and productive work environment. Here's an overview of the main types:

**Salary and Benefits:** This includes base pay, bonuses, health insurance, intangible benefits, and retirement plans. These conditions ensure fair compensation and employee support, contributing to motivation and overall well-being.

**Work Hours and Leave Policies:** Conditions related to working hours, overtime, and leave (sick leave, sabbatical, voluntary time off, vacation, parental leave, compassionate leave) outline the time commitments expected from employees and the flexibility they have for personal matters, directly affecting performance and work-life balance.

**Job Responsibilities and Expectations:** Defining roles and duties is crucial for aligning employee efforts with organizational goals. Clear job responsibilities contribute to a more efficient work environment and improve employee performance.

**Health and Safety Standards:** This involves workplace safety regulations and policies that protect employees from hazards. Providing a safe work environment is essential for maintaining morale and productivity.

**Employee Assistance Programs (EAPs):** EAPs are a form of employee support that provides resources for mental health, financial guidance, and personal counseling. Including EAPs in the conditions of employment definition ensures employees have access to resources that improve their well-being and job satisfaction.

**Contract Termination and Notice Periods:** This outlines the process and terms under which employment can be terminated, ensuring clarity and fairness for both parties. It also includes notice periods, severance pay, exit interviews and procedures, and sometimes, even specifications regarding wrongful termination.

Please, remember that the conditions of employment meaning does not really specify how many benefits or conditions you should inform the employee about, but it does imply the effective and clear communication to them.

Your organization can decide these conditions, and other mental health giveaway ideas, based on market opportunities, current assets and necessities, but they must also comply with the legal requirements in your country.

### **Conditions of Employment Influence Workplace Productivity**

The conditions of employment in the workplace play a significant role in shaping productivity. When these conditions are clearly defined and fairly implemented, they create the type of work environment that fosters employee engagement and efficiency. Here's how:

**Clear Expectations Boost Efficiency:** A well-defined set of conditions of employment ensures employees understand their roles, responsibilities, and goals. This clarity helps eliminate confusion, allowing teams to work more effectively and with greater focus.

**Access to Resources and Benefits:** By including comprehensive resources and benefits like health insurance, paid time off, and professional development, organizations support employee well-being, which directly enhances productivity. Healthy, satisfied employees tend to perform better.

**Engagement and Motivation:** Transparent and fair conditions of employment lead to higher levels of employee engagement. When employees feel secure and valued in their roles, they are more motivated to contribute meaningfully to the organization, improving overall performance.

**Work-Life Balance:** Conditions such as flexible work hours, mental health activities for employees, and leave policies allow employees to manage personal and professional obligations more effectively, reducing burnout and maintaining consistent productivity levels.

### **Areas of Conditions of Employment Include**

A company's conditions of employment can include a long list of policies, rules, benefits, and more. Some of the topics that conditions of employment typically cover are:

- An employee's job description
- An employee's salary and benefits
- Hours that an employee is expected to work
- A company's holiday and leave policies
- Requirements for performance reviews
- A company's pay schedule
- A company's dress code
- Non-compete or non-disclosure agreements
- A company's disciplinary policy
- An employee's FLSA exempt or non-exempt status

Some conditions of employment will be the same for most or all employees at a company. For example, every employee may be on the same pay schedule, be subject to the same disciplinary policy, and have the same company holidays off from work.

Other employment conditions are specific to a job or individual employee. For example, individual employees may have different working hours and different salaries or base wage rates. Employees may be able to negotiate during the hiring process to customize their conditions of employment.

### **Conditions of Employment Specified**

Conditions of employment may be specified in multiple locations. The most important place where employment conditions may be found is in an employee's written employment contract. Conditions in a written and signed contract cannot be changed without the employer and employee agreeing to a new contract.

Employment conditions may also be specified in a company's employee handbook or in policy memos that are sent out to employees.

Sometimes, the conditions of employment are only communicated verbally. However, this is not usually a good idea, because it can lead to disputes down the road if employers and employees don't agree on what was said.

### **Conclusion**

Conditions of employment define the rules, policies, benefits, and expectations for an employee. They are typically specified in an employment contract or employee handbook. The Department of Labor sets minimum standards for terms of employment, but employers and employees can negotiate tailored conditions of employment in most cases.

### **Review Questions:**

1. Define conditions of employment.
2. Explain the important for HR, business owners, and team Leaders of understanding condition of employment.
3. Describe the types of conditions of employment.
4. How do conditions of employment influence workplace productivity?
5. What do conditions of employment include?
6. Where are conditions of employment specified?

## **Lesson 2: Employment and Conditions of Service**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define conditions of employment according to Law.
- Explain the Classification of workers and period probation.
- Describe the types of conditions of employment.
- What is service book? Explain.
- Describe the form of service book.

### **Introduction:**

Conditions of employment refer to the terms, requirements, and policies that define the relationship between an employer and an employee. These conditions outline the rights, duties, and expectations for both parties, including aspects such as salary, working hours, benefits, job responsibilities, workplace policies, termination procedures, and compliance with labor laws. Conditions of employment may be specified in an employment contract, company service book etc.

## **According to the Bangladesh Labour Act 2006 (Amendment 2013 and 2018)**

### **CONDITIONS OF SERVICE AND EMPLOYMENT**

#### **Section 3. Conditions of Employment**

- 1) In every establishment employment of workers and other matters incidental thereto shall be regulated in accordance with the provisions of this chapter: Provided that any establishment may have its own rules regulating employment of workers, but no such rules shall be less favorable to any worker than the provisions of this chapter.
- (2) The service rules in any establishment as mentioned in the proviso to sub-section (1) shall be submitted for approval by the employer of such establishment to the chief inspector who shall, within six months of the receipt thereof make such order therein as he deems fit.
- (3) No service rules as mentioned in sub-section (2) shall be put into effect except with the approval of the chief Inspector.
- (4) Any person aggrieved by the order of the chief Inspector may, within thirty days of the receipt of the order, may prefer appeal to the Government and the order of the Government on such appeal shall be final.
- (5) Nothing provided in sub-section (2) shall apply to an establishment which is owned by or under management or control the Government.

#### **Section 4. Classification of workers and period probation**

- (1) workers employed in any establishment shall be classified in any of the following classes according to the nature and condition of work; namely (a) apprentice, (b) badli, (c) casual, (d) temporary, (e) probationer, and (f) permanent and (g) Seasonal worker;”
- (2) A worker shall be called an apprentice if he is employed in an establishment as a learner, and is paid an allowance during the period of his training.

- (3) A worker shall be called a badli if he is employed in an establishment in the post of a permanent worker or of a probationer during the period who is temporarily absent.
- (4) A worker shall be called a casual worker if he is appointed in an establishment temporarily for a work casual in nature.
- (5) A worker shall be called a temporary worker if he is employed in an establishment for work which is essentially of temporary nature, and is likely to be finished within a limited period.
- (6) A worker shall be called a probationer if he is provisionally employed in an establishment to fill a permanent vacancy in a post and has not completed the period of his probation in the establishment.
- (7) A worker shall be called a permanent worker if he is employed in an establishment on a permanent basis or if he has satisfactorily completed the period of his probation in the establishment.
- (8) The period of probation for a worker whose function is of clerical nature shall be six months and for other workers such period shall be three months: Provided that in the case of a skilled worker, the period of probation may be extended by an additional period of three months if, for any circumstances
- (9) If any worker, whose service has been terminated during his probationary period, including the extended period, is again appointed by the same employer within a period of three years, he shall, unless appointed on a permanent basis, be deemed to a probationer and the period or periods of his earlier probation shall be counted for determining his total period of probation.
- (10) If a permanent worker is employed as a probationer in a new post, he may at any time during the probationary period, be reverted to his old permanent post.
- (11) A worker shall be called a seasonal worker if he is employed in an establishment for a seasonal work and remains in the work for the season.
- (12) In appointing workers for industries like sugar mills, chital etc and seasonal factories, worker employed previous years shall be given preference.”

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

**Section 6. Service book:**

- (1) Every employer shall, at his own cost, provide a service book for every worker employed by him.
- (2) Such service book shall be kept in the custody of the employer.
- (3) Before employing a worker, the employer shall require from him the previous service book if the worker claims that he has been previously in employment under any other employer.
- (4) If such worker has any service book, it shall be handed over to the new employer by him and shall be kept in the custody of the employer, for which a receipt shall be given to him.

- (5) If such worker has no service book, a service book shall be provided under sub-section (1)
- (6) If the worker desires to keep and maintain a duplicate copy of his service book, he may do it at his own cost.
- (7) The employer shall hand over the service book to the worker on the termination of the workers' service with him.
- (8) If the service book handed over to the worker or the duplicate thereof maintained by him is lost by the worker, the employer shall provide him with a duplicate service book at the cost of the worker.
- (9) Nothing in this section shall apply to an apprentice, badli or casual worker.”

#### **Section 7. Form of service Book:**

- (1) The service book shall be of such size and in such form as may be prescribed and photograph of the worker shall be affixed to it.
- (2) The service book shall contain the following particulars, namely:
  - (a) name of the worker, name of mother and father and address of the worker, (in appropriate case name of husband/ wife shall be written)
  - (b) date of birth,
  - (c) particulars necessary for identification,
  - (d) name and address of the employer under whom previously employed, if any,
  - (e) period of employment,
  - (f) occupation or designation,
  - (g) wages and allowance, if any,
  - (h) leave availed, and
  - (i) conduct of the worker.

#### **Section 8. Entries in the service book:**

The employer shall at the commencement of the employment and during the continuance of the same, make such entries therein from time to time as are required by this section and the Rules and both the employer and the worker shall sign the entries as they are made.

#### **Review Question:**

1. Define conditions of employment according to Law.
2. Explain the Classification of workers and period probation.
3. Describe the types of conditions of employment.
4. What is service book? Explain.
5. Describe the form of service book.

## **Lesson 3: Leave from Work**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define leave from work.
- Explain the types of leave from work.
- Describe the procedure for leave.
- Explain the procedure for stoppage of work.
- Describe the closure of establishment.

### **Introduction:**

Leave of service refers to the time an employee is absent from work, whether paid or unpaid, with the employer's permission or due to authorized reasons. It encompasses various types of leave such as annual leave, sick leave, bereavement leave, and long service leave, each with specific conditions and entitlements.

### **What is Leave from Work?**

Leave is the time that employees take off work during otherwise normal working hours which they are entitled to, by law, or by contract. The thing to know is that leave comes in various forms and various levels of entitlement.

### **Types of Leave in Bangladesh**

In Bangladesh, employees are entitled to various types of leave as per the Bangladesh Labour Act 2006 and other relevant regulations. These include casual leave, sick leave, annual leave, festival holidays, and maternity leave. Additionally, some organizations may offer paternity leave or have specific provisions for temporary disablement leave.

Specific types of leave and their details:

**Casual Leave:** Workers are entitled to 10 days of casual leave per calendar year, which is not accumulative.

**Sick Leave:** Workers are entitled to 14 days of sick leave per calendar year, with potential requirements for a medical certificate.

**Annual Leave (Earned Leave):** Workers who have completed one year of continuous service are eligible for annual leave, with the amount of leave typically being one day for every 18 days of work.

**Festival Holidays:** Employees are entitled to 11 days of paid festival holidays each year, with the specific days determined by mutual agreement.

**Maternity Leave:** Female employees are entitled to 16 weeks of maternity leave, with 8 weeks before and 8 weeks after the expected delivery date, provided they have completed six months of service.

**Weekly Holiday:** Workers are entitled to at least one day off per week as a weekly holiday.

**Leave for Temporary Disablement:** Workers who suffer temporary disablement due to a workplace injury are entitled to medical treatment and compensation during the period of incapacity.

### **Section 10 Procedure for leave:**

According to the Bangladesh Labour Act 2006 in Section 10 the procedure for leave are:

- (1) A worker who desires to obtain leave of absence shall apply to the employer for the same in writing stating his leave address therein.
- (2) The employer or his authoresses' officer shall issue orders on the application within seen days of the application or two days prior to the commencement of leave applied for, whichever is earlier; Provided that if due to urgent reasons the leave applied for is to commence on the date of application or within three days thereof the order shall be given on the same day.
- (3) If the leave asked for is granted, a leave pass shall be issued to the worker.
- (4) If the leave asked for is refused or postponed the fact of such refusal or postponement, and the reasons thereof shall be communicated to the worker before the date on which the leave was expected to be commenced. And shall also be recorded in a register to be maintained by the employer for the purpose.
- (5) If the worker, after convincing of leave, desires an extension thereof, he shall, if such leave is due to him, apply sufficiently in advance before the expiry of the leave to the employer who shall, as far as practicable send a written reply either granting or refusing extension of leave to the worker to his leave-address.

### **Section 12. Stoppage of work.-**

- (1) An employer may, at any time, if necessary in the event of fire, sudden catastrophe, breakdown of machinery, stoppage of power supply, epidemics, wide spread riots or any other cause beyond his control, stop any section or sections of his establishment, wholly or partly, for such period as the cause for such stoppage continues to exist.
- (2) If such order of stoppage is given after the working hours has ended, the employer shall notify the concerned workers relating thereto, by a notice posted or hung the notice board in the section concerned or at a conspicuous place before the next working hour begins.
- (3) A notice under sub-section (2) shall contain direction as to when the work shall be resumed and whether such workers are to remain at their place of work at any time before the resumption of work.
- (4) In the event of such stoppage occurs during working hours, the employer shall, as soon as practicable, notify the workers concerned relating thereto by a notice in the manner specified in sub-section (2) and such notice shall contain direction as to when the work shall be resumed and whether such workers are to remain at their place of work.
- (5) Where workers are directed to stay at their place of work following such stoppage, the staying workers may not get wages, if the period of their stay does not exceed 1 (one) hour, and if it exceed 1 (one) hour they shall get wages for the whole period of their stay.
- (6) If the period of stoppage of work does not exceed 1 (one) working day, a worker, unless entitled to wages under sub-section (5), may not get any wages.

- (7) If the period of stoppage of work continues for more than 1 (one) working day, every concerned worker, other than a casual or substitute worker, shall be paid wages for all stopped working days exceeding 1 (one) day.
- (8) If the period of stoppage of work exceeds 3 (three) working days, the workers concerned shall be laid off in accordance with the provisions of section 16.
- (9) The lay-off mentioned in sub-section (8) shall be effective from the first day of stoppage of work, and any wage paid to a worker for the first 3 (three) days maybe adjusted against the compensation payable to such worker for the period of such lay-off.
- (10) If any piece-rate worker is affected due to stoppage of work, his average daily earning in the previous month shall be taken to be the daily wage for the purpose of sub-section (9).

### **Section 13. Closure of establishment.**

- (1) An employer may, in the event of an illegal strike in any section or department of any establishment, close down either wholly or partly such section or establishment and in cases of such closure the workers participated in the strike shall not be paid any wages.
- (2) Where by reason of closing down of any section or department of any establishment under sub-section (1) any other section or department is so affected that it is not possible to keep that section or department open, that section or department may also be closed down and the workers affected thereby shall be paid wages equal to the amount of compensation payable in the case of lay-off upto a period of 3 (three) days and for any period exceeding thereto may not get any wages.
- (3) The employer shall notify the fact of such closure, as soon as practicable, by a notice posted or hung on the notice board in the section or department concerned or at a conspicuous place in the establishment and the fact of resumption of work shall likewise be notified.

### **Review Questions:**

1. Define leave from work.
2. Explain the types of leave from work.
3. Describe the procedure for leave.
4. Explain the procedure for stoppage of work.
5. Describe the closure of establishment.

## **Lesson 4: Right for Compensation**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define right for compensation by using leave.
- Explain the types of leave for compensation.
- Describe the right of laid-off workers for compensation.
- Explain the laid-off workers not entitled to compensation in certain cases.
- Describe probation of compensation for death.
- Explain the retrenchment and re-employment of retrenched workers.

### **Introduction:**

In Bangladesh, employees are entitled to various forms of paid leave, including casual leave (10 days), sick leave (14 days), annual leave (earned leave) (calculated at 1 day for every 18 days of work), and festival holidays (11 days). They may also be eligible for maternity leave (16 weeks). Unused annual leave can be carried forward (up to 40 or 60 days depending on the worker category) or encashed. Employees working on festival holidays are entitled to twice their regular pay and a substitute holiday.

There are many types of leave were get compensation from the employer as:

#### **1. Statutory Leave Benefits:**

- Casual Leave: Employees are entitled to 10 days of paid casual leave per year for urgent situations.
- Sick Leave: Employees can take 14 days of paid sick leave annually, requiring a medical certificate if extended.
- Annual Leave (Earned Leave): Employees accrue annual leave at a rate of 1 day for every 18 days of work.
- Festival Holidays: Employees are entitled to 11 days of paid festival holidays per year.
- Maternity Leave: Female employees are entitled to 16 weeks of paid maternity leave after six months of continuous service.

#### **2. Compensation for Unused Leave:**

- Carry Over: Unused annual leave can be carried forward, with limits of 40 days for factory/road transport workers and 60 days for other workers.
- Encashment: Employees can receive payment for unused annual leave (encashment).

#### **3. Overtime and Festival Holiday Work:**

- Overtime: Employees are entitled to overtime pay for working beyond the regular hours (8 hours a day, excluding meal breaks).
- Festival Holiday Work: Working on a festival holiday requires compensation at twice the regular rate and a substitute holiday.

#### **4. Other Important Points:**

- Notice Period: Employers need to provide a notice period before terminating an employee.

- Employment Contract: While not mandatory, an employment contract outlines terms like salary, benefits, and termination procedures.
- Disciplinary Procedures: Employers must follow established disciplinary procedures when addressing issues like excessive leave usage.
- Legal Recourse: Employees can file a case in the Labor Court if their rights are infringed, according to Shanjid Siddique & Jurists.

### **Section 16. Right of laid-off workers for compensation.**

- (1) Whenever a worker, other than a substitute or casual worker, whose name is on the muster-rolls of an establishment and who has completed at least 1 (one) year of service under the employer is laid-off, he shall be paid compensation by the employer for all days during which he is so laid-off, except for weekly holidays.
- (2) The amount of compensation mentioned in sub-section (1) shall be equal to half of the total of the basic wages and dearness allowance and ad-hoc or interim wages, if any, and equal to the full amount of housing allowance that would have been payable to him if he had not been so laid-off.
- (3) A substitute worker whose name is on the muster-rolls of an establishment shall not be treated as substitute for the purpose of this section, if he has completely done year of continuous service in that establishment.
- (4) Unless there is an agreement to the contrary between the worker and the employer, no worker shall be entitled to the payment of compensation under this section for more than 45 (forty-five) days during any calendar year.
- (5) Notwithstanding anything contained in sub-section (4), if during a calendar year any worker is laid-off for more than 45 (forty-five) days, whether continuously or intermittently, and after the expiry of such 45 (forty-five) days the period of lay-off is extended for further 15 (fifteen) days or more, the worker shall, unless there is an agreement to the contrary between the worker and the employer, be paid compensation for every subsequent period of lay-off for 15 (fifteen) days or more.
- (6) The amount of compensation mentioned in sub-section (5) shall be equal to one-fourth of the total of the basic wages and dearness allowance and ad-hoc or interim wages, if any, and equal to the full amount of housing allowance, if any.
- (7) In any case, during a calendar year, if a worker is to be laid-off after the first 45 (forty-five) days as aforesaid, for any continuous period of 15 (fifteen) days or more, the employer may, instead of laying off such worker, retrench him under section 20.

### **Section 17. Muster-roll for laid-off workers.-**

Notwithstanding that the workers employed in an establishment are laid-off, the employer shall maintain a muster roll, and cause to be recorded therein the names of those who may, from amongst the laid-off workers, present themselves for work at the establishment during normal working hours:

Provided that the muster-roll shall not be maintained in any other manner nor any worker shall be employed on muster roll.

### **Section 18. Laid-off workers not entitled to compensation in certain cases.**

- (1) Notwithstanding anything contained elsewhere in this lesson, no compensation shall be payable to a worker who has been laid-off, if he-
  - (a) refuses to accept on the same wages, any alternative employment not requiring any skill or previous experience in the same establishment or in any other establishment belonging to the same employer and situated in the same town or village or situated within 8 (eight) kilometres of the establishment;
  - (b) does not present himself for work at the establishment at the appointed time during normal working hours at least once a day if so required by the employer.
- (2) For the purpose of sub-section (1) (b), a laid-off worker who presents himself for work at the establishment at the appointed time during normal working hours on any day and is not given employment within 2 (two) hours of his so presenting himself, shall be deemed to have been laid-off for that day within the meaning of this section.
- (3) If a laid-off worker who presents himself for work as mentioned in subsection(2), is, instead of being given employment at the commencement of any shift for any day, asked to present himself for the purpose during the second half of the shift for that day, and accordingly presents himself for work, he shall be deemed to have been laid-off only for one-half of that day, the other half being treated as on duty, irrespective of the fact whether he is given work or not.

### **Section 19. Compensation for death.**

If a worker dies while in service for at least more than 02 (two) years continuously under an employer, such employer shall pay as compensation 30 (thirty) days wages or, in the case of his death while working in the establishment or in the case of his death following an accident while working in the establishment 45 (forty five) days wages for every completed year of his service or any part thereof exceeding 6 (six) months or gratuity, whichever is higher, to the nominee of the deceased worker or, in the absence of the nominee, to his dependent and this money shall be in addition to the retirement benefit to which the deceased worker would have been entitled had he retired from service.

### **Section 20. Retrenchment.**

- (1) Any worker may be retrenched from service of any establishment on the ground of redundancy.
- (2) If any worker has been in continuous service under an employer for not less than 1 (one) year, the employer, in the case of retrenchment of such worker, Shall:
  - (a) give him 1 (one) month's notice in writing mentioning the reasons for his retrenchment or, in lieu of such notice pay him wages for the period of notice;
  - (b) send a copy of the notice to the Inspector General or any other officer specified by him, and another copy to the collective bargaining agent of the establishment, if any; and
  - (c) pay him as compensation 30 (thirty) days' wages for his every year of service or gratuity, if any, whichever is higher.

- (3) Notwithstanding anything contained in sub-section (2), in the case of retrenchment under section 16(7), no notice mentioned in sub-section (2) (a) shall be necessary; but the worker so retrenched shall be paid further 15 (fifteen) days' wages, in addition to the compensation or gratuity, which may be payable to him under sub-section (2) (c).
- (4) Where a worker of any particular category is required to be retrenched, the employer shall, in the absence of any agreement between him and the worker in this behalf, retrench the worker who was the last person to be employed in that category.

### **Section 21. Re-employment of retrenched workers.**

Where any worker is retrenched and the employer intends to employ again any worker within a period of one year of such retrenchment, the employer shall send a notice to the last known address of the retrenched worker asking him to apply for employment, and any worker who applies for re-employment in response to such request shall be given preference, and if more than one such retrenched workers apply, preference shall be given on the basis of their seniority in their previous services.

### **Review Questions:**

1. Define right for compensation by using leave.
2. Explain the types of leave for compensation.
3. Describe the right of laid-off workers for compensation.
4. Explain the laid-off workers not entitled to compensation in certain cases.
5. Describe probation of compensation for death.
6. Explain the retrenchment and re-employment of retrenched workers.

## **Lesson 5: Discharge from Service**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define discharge and its type and probation of law.
- Explain the punishment of convicted workers. Its types and related laws.
- Describe the procedure for punishment.
- Describe the special provisions relating to fine.
- Explain the termination of employment by employers and workers otherwise than by dismissal.
- Describe retirement of worker, payment of provident fund and certificate of service.

### **Discharge**

Discharge from employment signifies the end of an employee's working relationship with a company. This can occur due to various reasons, some within the employee's control (voluntary) and others not (involuntary). It's generally considered a negative event, as it necessitates finding new employment.

#### **Types of Discharge:**

- **Voluntary Discharge:** This occurs when an employee chooses to leave their job, often through resignation or retirement.
- **Involuntary Discharge:** This is when an employer terminates the employee's contract, often due to reasons like poor performance, misconduct, or business-related issues like layoffs or restructuring.

#### **Common Reasons for Involuntary Discharge:**

- **Poor Performance:** Failure to meet job expectations or consistently underperforming.
- **Misconduct:** Actions like theft, insubordination, or violating company policy.
- **Business Conditions:** Layoffs due to factors like lack of work, company downsizing, or financial difficulties.
- **Mutual Agreement:** A negotiated termination, potentially involving an early retirement package.

### **Punishment for Conviction**

In Bangladesh, punishments for convicted workers, like other citizens, are outlined in the Bangladesh Labour Act 2006 and the Penal Code of 1860 and include options like imprisonment (rigorous or simple), fines, forfeiture of property, and in some cases, even death or life imprisonment. The specific punishment depends on the nature of the offense and is determined by the court. For example, the Penal Code outlines various offenses and their corresponding punishments.

#### **Types of Punishments:**

- **Imprisonment:** This can be rigorous (with hard labor) or simple (without hard labor).
- **Forfeiture of Property:** The court may order the seizure of the convicted person's property.

- Fines: A monetary penalty can be imposed, and failure to pay may result in additional imprisonment.
- Death or Life Imprisonment: These are reserved for the most serious offenses.

**Section 22. Discharge from service:**

- (i) A worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health certified by a registered medical practitioner.
- (2) If a worker who has completed not less than one year of continuous service is so discharged, he shall be paid by the employer compensation at the rate of thirty days wages for every completed year of service, or gratuity, if any whichever is higher.

**Section 23. Punishment for conviction and misconduct:**

- (1) Notwithstanding anything regarding lay-off, retrenchment, discharge and termination of service as provided elsewhere in this Act, a worker may be dismissed without prior notice or pay in lieu thereof if he is-
  - (a) convicted for any criminal offence ; or
  - (b) he is found guilty of misconduct under section 24.
- (2) **Any worker found guilty of misconduct may, instead of being dismissed under sub-section (1), in consideration of any extenuating circumstances, be awarded any of the following punishments, namely:**
  - (a) Removal;
  - (b) Reduction to a lower post, grade or scale of pay for a period not exceeding one year;
  - (c) Stoppage of promotion for a period not exceeding one year;
  - (d) Withholding of increment for a period not exceeding one year;
  - (e) fine;
  - (f) suspension without wages and subsistence allowance for a period not exceeding seven days;
  - (g) censure or warning.
- “(3) A worker who is dismissed under sub-section (2)(a) shall, if his continuous service is not less than one year, be paid by the employer compensation at the rate of 15 days wages for every completed year of service:

Provided that if a worker is dismissed for a misconduct under sub-section (4)(b) and (g), no compensation is applicable. However, in such a case, the worker concerned shall be entitled to receive other dues for which he is legally entitled;”.

**(4) The following acts and omissions shall be treated as misconduct –**

- (a) willful insubordination or disobedience, whether alone or in combination with others to any lawful or reasonable order of a superior;
- (b) theft, fraud or dishonesty in connection with the employer’s business or property;
- (c) taking for giving bribe in connection with his or any other worker’s employment under the employer;
- (d) habitual late attendance;

- (f) habitual breach of any law or rule or regulation applicable to the establishment;
  - (g) riotous or disorderly behavior in the establishment, or any act subversive of discipline;
  - (h) habitual negligence work;
  - (i) habitual breach of any rule of employment, including conduct or discipline, approved by the chief Inspector;
  - (j) falsifying, tampering with, damaging or causing loss of employers official records.
- (5) If a worker who is dismissed from service under sub-section (1) (a), is acquitted on an appeal, he will be reinstated to his original post without back wages or to any new post suitable to him; and if such reinstatement is not possible, he shall be paid compensation at the rate payable to a person on discharge excluding the compensation already paid to him for his dismissal.

#### **Section 24. Procedure for punishment. –**

- (1) No order of punishment under section 23 shall be made against a worker unless-
  - (a) the allegations against him are recorded in writing;
  - (b) he is given a copy thereof and not less than seven day's time to explain;
  - (c) he is given an opportunity of being heard;
  - (d) "(d) is found guilty, after inquiry by an inquiry committee comprised of the equal number of representatives from the owner and workers' sides; Provided that the inquiry has to be completed within 60 days;"
  - (e) the employer or the manager approves of such order.
- (2) A worker charged for misconduct may be suspended pending enquiry into the charges against him and unless the matter is pending before any court, the period of such suspension shall not exceed sixty days; "Provided that during the period of such suspension, a worker shall be paid by his employer a subsistence allowance and shall be entitled to receive other allowances in full as applicable.";
- (3) An order of suspension shall be in writing and shall take effect immediately on delivery to the worker.
- (4) In an enquiry the accused worker may be helped by any person nominated by him who is employed in the establishment.
- (5) If in an enquiry, any oral evidence is given on behalf of any party, the party against whom the evidence is given may cross examine the witness.
- (6) If, on enquiry, a worker is found guilty and is punished under section 23 (1), he shall not be entitled to his wages for any period of suspension but shall be entitled to the subsistence allowance for such period.
- (7) If the charges against the worker is not proved in the enquiry, he shall be deemed to have been on duty for the period of suspension for enquiry, if any and shall be entitled to his wages for such period of suspension and the subsistence allowance shall be adjusted accordingly.

- (8) In cases of punishment, a copy of the order inflicting such punishment shall be supplied to the worker concerned.
- (9) If a worker refuses to accept any notice, letter, charge-sheet, order or any other document addressed to him by the employer, it shall be deemed that such notice, letter, charge-sheet, order or the document has been delivered to him, if a copy of the same has been exhibited on the notice posted and another copy has been sent to the address of the worker as available from the records of the employer, by registered post.
- (10) In awarding punishment, the employer shall take into account the previous record of the worker concerned, the gravity of the misconduct, and any other that may exist.

**Section 25. Special provisions relating to fine:**

- (1) No fine exceeding one-tenth of the wages payable to a worker in respect of a wage-period may be imposed in any one wage-period on any worker.
- (2) No fine shall be imposed on a worker who is under the age of fifteen years.
- (3) No fine imposed on any worker shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.
- (4) Every fine shall be deemed to have been imposed on the day of the commission of the offence in respect of which it was imposed.
- (5) All fines and all realizations there of shall be recorded in a prescribed register to be kept by the employer and all such realizations shall be applied only to such purposes beneficial to the workers employed in the establishment.

**Section 26. Termination of employment by employers otherwise than by dismissal, etc. :**

- (i) The employment of a permanent worker may be terminated by the employer, otherwise than in the manner provided elsewhere in this section, by giving to him in writing-
  - (a) one hundred and twenty days' notice, if he is a monthly rated worker;
  - (b) sixty days' notice, in case of other worker.
- (2) The employment of a temporary worker may be terminated by the employer, otherwise than in the manner provided elsewhere in this section, and if it is not due to the completion, cessation, abolition or discontinuance of the temporary work for which he was appointed, by giving to him in writing-
  - (a) thirty days' notice, if he is a monthly rated worker;
  - (b) fourteen days notice, in case of other worker.
- (3) Where an employer intends to terminate the employment of a worker without any notice, he may do so by paying to the worker, wages in lieu of the notice, which is required to be given under subsection (1) or (2), as the case may be.
- (4) Where the employment of a permanent worker is terminated under this section, he shall be paid by the employer compensation at the rate of thirty days' wages for every completed year of service or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act.

### **Section 27. Termination of employment by workers:**

- (1) A permanent worker may resign from his service by giving to the employer in writing sixty day's notice
- (2) A temporary worker may resign from his service by giving to the employer in writing-
  - (a) thirty days notice, if he is a monthly rated worker;
  - (b) fourteen days notice in case of other worker.
- (3) Where a worker intends to resign from his service without any notice, he may do so by paying to the employer wages in lieu of the notice which is required to be given under sub-section (1) or (2), as the case may be.
- (4) Where a permanent worker resigns from his service under this section, he shall be paid by the employer compensation-
  - (a) at the rate of fourteen days wages for every completed year of service, if he has completed five years of continuous service or more but less than ten years;
  - (b) at the rate of thirty days wages for every completed year of service if he has completed ten years of continuous service or more; or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act.

### **Section 28. Retirement of worker:**

- (1) A worker employed in any establishment shall, notwithstanding anything contained elsewhere in this lesson, retire from employment ipso facto on the completion of the fifty-seventh year of his age.
- (2) For the purpose of counting age of the worker under this section the date of birth recorded in the service book of the concerned worker shall be the conclusive proof.
- (3) Every retiring worker under the provisions of section 26(4) or under own service rule of the establishment, shall be paid his benefits due to him. (4) Appropriate authority, if thinks proper, may afterwards, employ the retiring worker under contract.

### **Section 29. Payment of provident Fund:**

No worker, who is a member of any provident Fund, shall be deprived due to retrenchment, dismissal, removal, discharge or termination of service of the benefit of the provident Fund including the employer's contribution thereto, if he is entitled to it under the rules of that Fund.

### **Section 31. Certificate of service.**

Every worker, other than a casual or substitute worker, shall be entitled to get a certificate relating to service from his employer at the time of his retrenchment, discharge, dismissal, removal, retirement or termination of service.

### **Conclusions**

Conditions of employment define the terms under which an employee works, ensuring a clear understanding of expectations, responsibilities, and rights. These conditions help protect both employers and employees by establishing fair treatment, compliance with

labor laws, and structured workplace policies. When drafting employment contracts or company policies, clearly outlining conditions of employment ensures transparency, minimizes legal risks, and fosters a positive work environment.

**Review Questions:**

1. Define discharge and its type and probation of law.
2. Explain the punishment of convicted workers. Its types and related laws.
3. Describe the procedure for punishment.
4. Describe the special provisions relating to fine.
5. Explain the termination of employment by employers and workers otherwise than by dismissal.
6. Describe retirement of worker, payment of provident fund and certificate of service.

# MATERNITY BENEFITS

# 6

## Unit Highlights

- Lesson 1: Introduction to Maternity Benefits
- Lesson 2: Right, Liability and Payment of Maternity Benefits

## Technologies Used for Content Delivery

- ❖ BOUTUBE
- ❖ BOU LMS
- ❖ WebTV
- ❖ Web Radio
- ❖ Mobile Technology with MicroSD Card
- ❖ BTV Program
- ❖ Bangladesh Betar Program

*Under the Bangladesh Labour Act, 2006 (BLA), eligible female workers are entitled to paid maternity leave, which was extended to 120 days (17 weeks) by a 2023 amendment, to be taken around childbirth. Eligibility requires six months of service and fewer than two surviving children. Benefits are paid as full wages, calculated based on the average daily wage of the three months prior to the leave. The law also prohibits termination during leave and mandates appropriate childcare facilities in some establishments.*



## **Lesson 1: Introduction to Maternity Benefits**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define maternity benefits.
- Describe the types of maternity benefits.
- Discuss the legal framework of maternity benefits.
- Explain the employment of women worker prohibited during certain period.

### **Meaning of Maternity Benefits**

Maternity benefits refer to the financial and medical support provided to employees during pregnancy and after childbirth. These benefits can vary by country, employer, and specific policies.

### **Types of Maternity Benefits:**

**Paid Leave:** Employees may receive a certain period of paid time off before and after childbirth. The duration and pay rate can differ based on local laws and company policies.

**Unpaid Leave:** In some cases, employees are entitled to take unpaid leave for maternity purposes, ensuring job protection during their absence.

**Health Insurance Coverage:** Many maternity benefits include coverage for prenatal care, childbirth, and postnatal care, which can help cover medical expenses.

**Job Protection:** Laws often protect employees from losing their jobs due to maternity leave, ensuring they can return to their position or a similar one.

### **Legal Framework of Maternity Benefits:**

**Country-Specific Laws:** Different countries have varying regulations regarding maternity benefits. For example, The Bangladesh Labour Act 2006 in the Bangladesh provides certain protections, while USA and many European countries offer more extensive paid leave.

**Employer Policies:** Companies may offer additional benefits beyond legal requirements, such as extended leave or flexible work arrangements etc.

Understanding the specific maternity benefits available requires reviewing local laws and employer policies.

### **Maternity Benefits in Bangladesh**

According to the Bangladesh Labour Act 2006 amended 2018 and 2013 has many laws are available regarding maternity benefits. These are shown below:

#### **MATERNITY BENEFIT**

##### **Section 45. Employment of women worker prohibited during certain period:**

- (1) No employer shall knowingly employ a woman in his establishment during the eight weeks immediately following the day of her delivery.

- (2) No woman shall work in any establishment during the eight weeks immediately following the day of her delivery.
- (3) No employer shall employ any woman for doing any work which is of an arduous nature or which involves long hours of standing or which is likely to adversely affect her health; if she has reason to believe or if she has informed him that she is likely to be delivered of a child within ten weeks; she has to the knowledge of the employer been delivered of a child within the preceding ten weeks:

Provided that in the case of tea plantation worker, a woman worker may do work of a light nature if and for so long as the medical practitioner of the concerned tea estate certifies that she is physically fit to do so; and, for the days that she does such work, she shall be paid for such work wages at the rate prescribed under the existing law, and such wages shall be payable in addition to the maternity benefit.

### **According to Amendment 2018:**

The amendments that guarantee to make workplaces better for women workers, i.e. Rule number 16, which fixes the maternity benefit calculation and calculates the wage rate divided by 26, which increases their benefits. Now a woman can avail of maternity leave for at least 8 weeks after the birth of her child, even if she has not disclosed her pregnancy before delivery. The previous Act was largely unclear about what should happen in such a case but this amendment has clarity that the woman worker can now enjoy 8 weeks of paid leave in addition to her other benefits. The rule is not valid for the woman suffering a miscarriage but even then, she would be allowed sick leaves as it requires. According to the provision, in case of miscarriage, a woman worker will be entitled for a four-week leave with wages for her sickness.

### **Provisions of Amendment 2023:**

The Bangladesh Labour Act, 2006, was amended in November 2023 to extend maternity leave from 112 days (16 weeks) to 120 days (approximately 17 weeks). This amendment allows female workers to take the full 120 days before or after childbirth, as per their preference, whereas previously, it was divided into 8 weeks before and 8 weeks after.

### **Review Questions:**

1. Define maternity benefits.
2. Describe the types of maternity benefits.
3. Discuss the legal framework of maternity benefits.
4. Explain the employment of women worker prohibited during certain period.

## **Lesson 2: Right, Liability and Payment of Maternity Benefits**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define right to, and liability for, payment of maternity benefit.
- Describe the procedure regarding payment of maternity benefit.
- Discuss the amount and calculation of maternity benefits.
- Explain the restriction on termination of employment of a woman in certain cases.

### **Section 46. Right to, and liability for, payment of maternity benefit:**

- (1) every woman employed in an establishment shall be entitled to and her employer shall be liable for, the payment of maternity benefit in respect of the period of eight weeks preceding the expected day of her delivery and eight weeks immediately following the day of her delivery: Provided that a woman shall not be entitled to such maternity benefit unless she has worked under the employer, for a period of not less than six month immediately preceding the day of her delivery.
- (2) No maternity benefit shall be payable to any woman if at the time of her confinement she has two or more surviving children, but in that case she will be entitled to the leave to which she would otherwise be entitled.

### **According to amendment of 2018 and 2023:**

In Bangladesh, female workers are entitled to 16 weeks of paid maternity leave, with 8 weeks before and 8 weeks after delivery. This leave is paid, with the benefit calculated based on the average wages earned in the three months prior to the notice of pregnancy. Employers are responsible for providing this benefit, but it's not applicable to women with two or more surviving children at the time of delivery.

### **Section 47. Procedure regarding payment of maternity benefit:**

- (1) Any pregnant woman entitled to maternity benefit under this act may, on any day, gives notice either orally or in writing to her employer that she expects to be confined within eight weeks next following and may therein nominate a person for purposes of receiving payment of maternity benefit in case of her death.
- (2) Any woman who has not given such notice and has been delivered of a child, shall within seven days, give similar notice to her employer that she has given birth to a child.
- (3) When a notice referred to in sub-section (1) or (2) is received, the employer shall permit the women to absent herself from work from the day following the date of notice in the case mentioned in sub-section (1); from the day of delivery in the case mentioned in sub-section (2) until eight weeks after the day of delivery.
- (4) An employer shall pay maternity benefit to a woman entitled thereto in such one of the following ways as the woman desire, namely : (a) for eight weeks, within three working days of the production of a certificate signed by registered medical practitioner stating that the woman is expected to be confined within eight weeks of the date of the certificate, and for the remainder of the period for which she is entitled to maternity benefit under this act within three working days of the production of proof that she has given birth to a child; or (b) for the said period up to and including

the day of delivery, within three working days of the production of proof that she has given birth to a child, and for the remainder of the said period, within eight weeks of the production of such proof; or (c) for the whole of the said period, within three working days of the production of proof that she has given birth to a child

- (5) The proof required to be produced under sub-section (4) shall be either a certified extract from a birth register under the births and deaths registration act, 2004 (XXIX of 2004) or a certificate signed by a registered medical practitioner or such other proof as may be accepted by the employer.

### **According to amendment of 2018 and 2023**

In Bangladesh, maternity benefits are governed by the Bangladesh Labour Act (BLA) and include provisions for leave and financial compensation. Key aspects involve an 18-week (120 days) paid leave, calculated based on the average daily wage, and protections against termination during leave. Recent amendments have increased leave duration and focused on facilitating trade union formation to enhance worker rights.

### **Key Provisions:**

- **Leave Duration:** The BLA provides for 120 days (approximately 17 weeks) of maternity leave, with a choice of how to distribute the leave before and after childbirth.
- **Financial Benefits:** Maternity benefits are paid at the rate of the woman's average daily wage, calculated based on the income earned in the three months preceding the notice of leave.
- **Eligibility:** To qualify for maternity benefits, a woman must have been employed by the same employer for at least six months and have fewer than two surviving children at the time of delivery.
- **Protection from Termination:** The BLA protects women from termination or dismissal during maternity leave.
- **Application Process:** A written application with medical documentation from a licensed doctor, submitted at least eight weeks before the expected delivery date, is required.
- **Recent Amendments:** In 2023, the BLA was amended to extend the maternity leave period to 120 days and facilitate trade union formation to strengthen worker representation.

### **Section 48. Amount of maternity benefit:**

- (1) The maternity benefit which is payable under this act shall be payable at the rate of daily, weekly or monthly average wages, as the case may be, calculated in the manner laid down in sub-section (2), and such payment shall be made wholly in cash.
- (2) For the purpose of sub-section (1) the daily, weekly or monthly average wages, as the case may be, shall be calculated by dividing the total wages earned by the woman during the three months immediately preceding the date on which she gives notice under this act by the number of day she actually worked during the period.

### **According to amendment of 2018 and 2023:**

In Bangladesh, the amount of maternity benefit is equivalent to the woman's average daily wage for the 16 weeks (112 days) of maternity leave, calculated based on her earnings from the three months prior to giving notice. This benefit is paid at the rate of the woman's average daily wage, which is determined by dividing her total earnings in the three months before notice by the number of days she actually worked during that period.

### **Calculation of Maternity Benefits:**

#### **Average Daily Income:**

Total income earned in the three months preceding the notice of leave, divided by the total number of days worked in those three months.

#### **Example:**

If a woman earned 60,000 BDT in the three months before her notice and worked 60 days, her average daily income would be 1,000 BDT. For a 120-day leave, her total maternity benefit would be 120,000 BDT.

### **Section 50. Restriction on termination of employment of a woman in certain cases:**

If any notice or order of discharge, dismissal, removal or termination of employment is given by an employer to a woman within a period of six month before and eight weeks after her delivery and such notice or order is given without sufficient cause, she will not be deprived of any maternity benefit to which she would have become entitled under this chapter.

New Additions to Maternity Benefits made in 2023

#### **1. Extended Maternity Leave Period**

Maternity leave has been increased from **112 days (16 weeks) to 120 days**.

Also, the leave can now be taken entirely *before or after childbirth*, giving more flexibility to female workers.

#### **2. Leave for Miscarriage**

A new provision (Labour Rules) introduces leave entitlement of four weeks for a woman in case of miscarriage. This leave is without deduction from wages.

#### **3. Clarification on Paid Post-Partum Leave**

The amendments clarify that post-partum maternity leave (after childbirth) is to be paid. Previously there was ambiguity if leave without prior notice and post-delivery would be paid. Now, payment obligation is clear.

#### **4. Provision on Notice Timing and Flexibility**

- The new amendment allows flexibility: maternity leave can be taken entirely before or after delivery.
- Also, in Labour Rules, there is a proviso that if a woman gives birth *after* the scheduled 8 weeks preceding delivery, those extra days can be adjusted under post-delivery leave.

## **5. Changes in Calculation / Rules for Benefits**

- Under amended rules, there is a rule (Rule 39A) on Calculation of maternity benefit that allows certain deductions (for example, provident fund subscriptions) and changes how the average daily wage is determined.
- Also, the new labour rules add clear instructions on how maternity benefit is calculated and paid.

### **Review Questions:**

1. Define right to, and liability for, payment of maternity benefit.
2. Describe the procedure regarding payment of maternity benefit.
3. Discuss the amount and calculation of maternity benefits.
4. Explain the restriction on termination of employment of a woman in certain cases.

# WORKING HOURS AND LEAVE

7

## Unit Highlights

- Lesson 1: Introduction to Working Hours and Leave
- Lesson 2: Working Hours

## Technologies Used for Content Delivery

- ❖ BOUTUBE
- ❖ BOU LMS
- ❖ WebTV
- ❖ Web Radio
- ❖ Mobile Technology with MicroSD Card
- ❖ BTV Program
- ❖ Bangladesh Betar Program

*The Bangladesh Labour Act, 2006, mandates 48 hours of work per week (8 hours per day) as a standard, with a maximum of 60 hours per week for overtime, paid at double the regular rate. The Act also provides for various types of paid and unpaid leave, including casual, sick, annual, festival, maternity, and paternity leave, with specific eligibility criteria and durations for each. Women have protections against night shifts (10 pm to 6 am) and require their consent for night work.*



## **Lesson 1: Introduction to Working Hours and Leave**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define the standard working hours with variations and legal considerations.
- Describe the importance of defining working hours.
- Define leave and explain the form of and reasons for leave.
- State the process of leave.

### **Introduction:**

Understanding working hours is essential in today's fast-paced world, where productivity and work-life balance are often at odds. Working hours define the time we dedicate to our jobs and directly impact our efficiency and overall well-being. Let's explore the significance of working hours, their definitions across various industries, and strategies to manage them effectively. Working hours and leave policies are essential components of employment that define the structure of a work week and the time off employees can take.

### **Meaning of working hours**

Working hours refer to the specific times during which employees are expected to perform their job duties.

### **Standard Working Hours**

- Typically range from 35 to 40 hours per week.
- Commonly structured as 8-hour days, in Bangladesh Sunday through Thursday.

### **Variations**

- May vary by industry, company, or role.
- Some positions require shift work, including nights and weekends.

### **Legal Considerations**

- Governed by labor laws, which can dictate minimum and maximum hours.
- Overtime pay may apply for hours worked beyond the standard.

### **Flexible Arrangements**

- Some employers offer flexible working hours or remote work options.
- Employees may have the ability to adjust start and end times.

Understanding working hours is essential for both employers and employees to ensure compliance with labor regulations and to maintain work-life balance.

### **Importance of Defining Working Hours**

**Work-life Balance:** Work-life balance involves setting clear boundaries between work and personal time to help employees maintain a healthy lifestyle and prevent burnout. Work-life balance allows individuals to manage their responsibilities effectively while having time to rest and recharge.

**Productivity:** Predictable schedules enhance productivity by allowing for better planning and resource allocation. This increases efficiency, as tasks can be organized more effectively and resources can be utilized optimally.

**Employee satisfaction:** Employee satisfaction improves when employees feel their time is respected, leading to greater engagement and commitment to their work. Valuing their time contributes to a positive work environment and fosters a sense of appreciation and loyalty.

**Legal Compliance:** Legal compliance involves adhering to labour laws regarding working hours, which helps protect both employers and employees from legal disputes. By following these regulations, organizations ensure fair treatment and minimize the risk of legal challenges related to working time and conditions.

### **Meaning of Leave**

According to Cambridge Dictionary “to go away from a place or a situation, either permanently or for a temporary period”. Leave from a workplace refers to the time an employee is permitted to be absent from their job, typically for personal, medical, or other reasons.

### **Form of Leave:**

**Paid Leave:** Employees receive their regular salary during this time. Examples include vacation days and sick leave.

**Unpaid Leave:** Employees do not receive pay but can take time off for various reasons, such as family emergencies or personal matters.

**Statutory Leave:** Mandated by law, such as maternity or paternity leave, which provides specific rights and protections.

**Leave of Absence:** A formal request for extended time away from work, often requiring approval from management.

### **Common Reasons for Leave:**

- Illness or medical treatment
- Family responsibilities
- Personal matters or emergencies
- Vacation or leisure time

### **Process of leave:**

- Employees typically need to notify their employer in advance and may need to fill out a leave request form.
- Approval processes can vary by organization and may require documentation, especially for medical leave.

Understanding the specific policies regarding leave can vary by company and jurisdiction, so it is advisable to consult the employee handbook or HR department for detailed information.

## **Amendments in Bangladesh Labour Act 2006 (Leave & Working Hours related)**

### **1. 2013 Amendment**

- Maternity leave was increased to 16 weeks (112 days) with pay.
- Before this, it was only 12 weeks.

### **2. 2018 Amendment**

- Adjusted some provisions on night shifts for women and working hours flexibility.
- Added clauses to improve leave and safety standards for female workers.

### **3. 2024 (Proposed / Approved in Principle)**

- Maternity leave extended to 120 days (about 17 weeks).
- Flexibility given: leave can be taken *entirely before, entirely after, or partly before & after* childbirth — as the worker chooses.

## **Review Questions:**

1. Define the standard working hours with variations and legal considerations.
2. Describe the importance of defining working hours.
3. What is leave? Explain the form of and reasons for leave.
4. State the process of leave.

## **Lesson 2: Working Hours**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define daily and weekly working hours.
- Describe the interval, rest or meal.
- Explain the night shift of working.
- State the various provision of casual, sick and festival leave.

### **Introduction:**

Understanding working hours and leave is essential in today's fast-paced world, where productivity and work-life balance are often at odds. Working hours define the time we dedicate to our jobs and directly impact our efficiency and overall well-being. Leaves are essential plant organs primarily responsible for photosynthesis, the process by which plants convert sunlight into energy. They come in various shapes, sizes, and structures, adapting to different environments.

### **Section 100. Daily working hour.-**

No adult worker shall ordinarily work or be required to work in an establishment for more than 8 (eight) hours in a day:

Provided that subject to the provisions of section 108, any such worker may work in an establishment up to 10 (ten) hours also in a day.

### **Section 101. Interval for rest or meal.-**

In an establishment no worker shall be liable to-

- (a) work for more than 6 (six) hours in a day, unless he is given an interval of 1 (one) hour for rest or meal during that day;
- (b) work for more than 5 (five) hours in a day, unless he is given an interval of half an hour for the said purpose during that day; or
- (c) work for more than 8 (eight) hours in a day, unless he is given 1 (one) interval under clause (a) or 2 (two) intervals under clause (b) for the said purpose during that day;
- (d) notwithstanding anything contained in this Act, the Government shall, by rules, prescribe the working and rest hours for various factories where in the workers are engaged in physically hazardous and laborious work including construction, re-rolling, steel-mills, ship breaking and welding.

### **Section 102. Weekly working hours.-**

- (1) No adult worker shall ordinarily work or be required to work in an establishment for more than 48 (forty-eight) hours in a week.
- (2) Subject to the provisions of section 108, an adult worker may work for more than 48 (forty-eight) hours also in a week:

Provided that the total working hours of such worker shall not exceed 60 (sixty) hours in a week, and on the average 56 (fifty-six) hours per week in a year: Provided further that the total additional working hours of a worker employed in a road transport establishment shall not exceed 150 (one hundred and fifty) hours in a year:

Provided further that the Government may, in the cases of some particular industries, under conditions imposed by order in writing, relax the provisions of this section or exempt from the provisions of this section at a time for a period of not exceeding 6 (six) months, if it is satisfied that in the public interest or in the interest of economic development such relaxation or exemption is necessary.

**Section 103. Weekly holiday.-**

Every worker employed in an establishment-(a) shall be entitled to one and a half day holiday in a week in the case of a shop or commercial establishment or an industrial, establishment and one day in a week in the case of a factory and establishment;

(b) shall be entitled to one day of twenty four consecutive hours holiday in a week in the case of road transport establishment;

(c) no deduction shall be made from the wages of a worker for any holiday under the aforesaid clauses (a) and (b).

**Section 106. Night shift.-** Where the shift work of an adult worker in an establishment extends beyond midnight-

(a) for the requirement of section 103, a holiday for a whole day for the worker shall mean 24 (twenty-four) consecutive hours beginning from the end of his shift; and

(b) the following day for him shall mean 24 (twenty-four) consecutive hours beginning from the end of his shift, and the hours he has worked after midnight shall be counted to the hours of his works of the previous day.

**107. Restrictions on cumulative hours of work on a vehicle.-**

No worker shall work or be allowed to work on 1 (one) or more than 1 (one) vehicles in excess of the time permitted under this Act.

**Section 110. Restrictions on double employment.**

No adult worker shall be allowed to work in more than 1 (one) establishment on the same day, without permission of the Inspector General and on such conditions as may be imposed by him.

**Section 115. Casual leave.-**

Every worker shall be entitled to casual leave for 10 (ten) days with full wages in a calendar year, and if such leave is not availed for any reason, it shall not be accumulated and the leave of any year shall not be availed in the succeeding year:

Provided that nothing in this section shall apply to a worker employed in a tea plantation.

**Section 116. Sick leave.-**

(1) Except a newspaper worker, every worker shall be entitled to sick leave with full wages for 14 (fourteen) days in a calendar year.

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

(3) No such leave shall be granted unless a registered medical practitioner appointed by the employer or, in the absence of such medical practitioner, any other registered

medical practitioner, after examination, certifies that the worker is ill and requires leave for treatment or cure for such period as is mentioned in the certificate.

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

**Section 117. Annual leave with wages.-**

- (1) Every adult worker who has completed 1(one) year of continuous service in an establishment shall be allowed during the following period of 12 (twelve) months' leave with wages for days calculated on the basis of the works of the preceding 12 (twelve) months at the following rate, namely:-
- (a) 1 (one) day for every 18 (eighteen) days of work, in the case of a shop or commercial or industrial establishment or factory or road transport establishment;
  - (b) 1 (one) day for every 22 (twenty two) days of work, in the case of tea plantation;
  - (c) 1 (one) day for every 11 (eleven) days of work, in the case of a newspaper worker.
- (2) Every adolescent worker who has completed 1 (one) year of continuous service in an establishment shall be allowed during the subsequent period of 12(twelve) months' leave with wages for a number of days calculated for the works of previous 12 (twelve) months at the following rate, namely:-
- (a) 1 (one) day for every 15 (fifteen) days of work, in the case of a factory;
  - (b) 1 (one) day for every 18 (eighteen) days of work, in the case of a tea plantation;
  - (c) 1 (one) day for every 14 (fourteen) days of work, in the case of a shop or commercial or industrial establishment.
- (3) If any holiday occurs into the leave granted under this section shall be included in such leave.
- (4) If a worker does not, in any period of 12 (twelve) months, take the leave either in whole or in part, to which he is entitled under sub-sections (1) or (2), such leave shall be added to the leave which he is entitled to in the succeeding period of 12 (twelve) months.(5) Notwithstanding anything contained in sub-section
- (5) An adult worker shall cease to earn any leave under this section, when the earned leave due to him amounts to-
- (a) 40 (forty) days in the case of a factory or road transport establishment;
  - (b) 60 (sixty) days in the case of a tea plantation or shop or commercial or industrial establishment.
- (6) Notwithstanding anything contained in sub-section (4), an adolescent worker shall cease to earn any leave under this section when the earned leave due to him amounts to-
- (a) 60 (sixty) days in the case of a factory or tea plantation;
  - (b) 80 (eighty) days in the case of a shop or commercial or industrial establishment.
- (7) If a worker applies for earned leave and is refused by the employer for any reason, such refused leave shall be added to the credit of such worker beyond the limit mentioned in sub-section (5) or (6).
- (8) For the purposes of this section, a worker shall be deemed to have completed a period of continuous service in an establishment notwithstanding any interruption in service during that period occurred due to-

- (a) any holiday;
- (b) any leave with wages;
- (c) any leave with or without wages due to sickness or accident;
- (d) any maternity leave not exceeding 16 (sixteen) weeks;
- (e) any period of lay-off;
- (f) any legal strike or any illegal lock-out.

**Section 118. Festival holidays.-**

- (1) Every worker shall be allowed in a calendar year 11 (eleven) days of festival holiday with wages.
- (2) The employer shall fix the day and dates of such leave in such manner as may be prescribed by rules.
- (3) A worker may be required to work on any festival holiday, but one day substitute holiday and two days' compensatory wages shall be provided for him.

**Section 119. Calculation of wages and payment thereof during the period of leave or holiday.-**

- (1) For the leave or holidays allowed to a worker under this Act, he shall be paid at the rate equal to the daily average of his full time wages, dearness allowances, and ad-hoc or interim wage, if any, except any overtime allowance and bonus for the days on which he worked during the month immediately preceding his leave:  
 Provided that if a worker in any establishment is entitled to cash in lieu of any advantage of supply of food grains, it shall be included in his wages.
- (2) If an adult worker is allowed annual leave for a period of not less than 4 (four) days and an adolescent worker for period of not less than 5 (five) days, at a time, he shall, in so far as it is practicable, be paid his wages for the period of the leave so allowed, before his leave begins.

**Conclusions**

In summary, understanding and managing working hours is vital for personal productivity, employee satisfaction, and organizational success. Whether you adhere to a standard schedule, explore flexible options, or navigate the complexities of overtime, the key is to find a balance that works for you. By implementing strategies such as setting boundaries, utilizing technology, and prioritizing tasks, you can take charge of your working hours and achieve a healthier work-life balance. Remember, effective management of working hours doesn't just benefit you—it contributes to a more productive and harmonious workplace for everyone involved.

Understanding the various types of employee leave is essential for both employees and employers. By recognizing the distinctions between vacation days, sick leave, personal days, and other types of leave, individuals can effectively manage their time off and ensure they receive the benefits they deserve. Employers can create comprehensive leave policies that support employee well-being, enhance job satisfaction, and promote a positive work environment.

### **Review Questions**

1. Define daily and weekly working hours.
2. Describe the interval, rest or meal.
3. Explain the night shift of working.
4. State the various provision of casual, sick and festival leave.

# WAGES AND PAYMENTS

# 8

## Unit Highlights

- Lesson 1: Wages and Salary
- Lesson 2: Laws Related to Wages and Salary

## Technologies Used for Content Delivery

- ❖ BOUTUBE
- ❖ BOU LMS
- ❖ WebTV
- ❖ Web Radio
- ❖ Mobile Technology with MicroSD Card
- ❖ BTV Program
- ❖ Bangladesh Betar Program

*The Bangladesh Labour Act, 2006, mandates that employers must pay workers the stipulated wages on time, within the prescribed wage periods (no more than one month) and in current currency. Employers are responsible for wages, and the Act details grounds for permissible deductions, such as absence or loss of goods, with strict rules and limits defined by specific sections. It also establishes processes for workers to claim delayed wages or challenge deductions, allowing for applications to the Labour Court and directing employers to make payments with potential fines for non-compliance or malicious acts.*



## **Lesson 1: Wages and Salary**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define the wages and salary.
- Describe the ten important factors influencing wages.
- Distinguish between wages and salary.
- Define payment and its implications.

### **Introduction:**

Wages and salary management is a crucial aspect of human resource management that involves the administration and control of financial compensation to employees for the work they perform. It encompasses various processes, policies, and systems designed to ensure fair and competitive compensation, aligning with organizational goals and industry standards.

### **Definitions and Meaning of Wages**

Labour is one of the most important factors of production. Labour expects fair wages for the services it renders to the process of production. The term wages refer to payments for services, whether manual or based on hours of work or quantity of output. Normally, the term wages is used to refer to payment made for services given by manual labour or non-supervisory and non-clerical staff. It refers to the hourly or daily rate paid to production and maintenance employees, i.e., blue collar employees.

According to Berham, “Wages mean the amount paid to the labour for his services to the employer”.

According to P.M. Stohank, “Wages is the labour’s remuneration which creates utility”.

According to the Bangladesh Labour Act, 2006, "wages" refers to all remuneration, expressed in money or capable of being expressed in money, that is payable to a worker for their employment or work done, including any additional remuneration. This includes basic salary, bonuses, overtime pay, and any other form of payment that can be quantified in monetary terms. The Act also specifies that wages must be paid on time and that deductions can only be made under specific circumstances

The term salary is defined as the remuneration paid to clerical and managerial personnel employed on a monthly or annual basis. Nowadays, all categories of employees are treated as human resources and the terms wages/salary are used interchangeably. Wages/salary is the direct remuneration paid to an employee compensating his services to an organisation.

### **Ten Important Factors Influencing Wages**

1. **Wage policy of the company** – The wage policy has a decisive influence on the structure and wage level. Example – Policy decisions on salary fixation based on length of service or performance or both, to pay below average or above average rates, to pay more to reduce employee turnover etc.

2. **Prevailing wages in comparable industries** – Wage rates are related to region and industry base. The organisation has to pay wages at least equal to prevailing rates for similar jobs in similar organisations.
3. **Financial position of the company** – Increase in wages are paid by companies who can afford to pay. Companies having good sales and profits tend to pay higher wages. Total cost of labour has to be considered in determining the ability to pay. During period of prosperity, companies pay higher wages and wages are reduced during period of depression.
4. **Demand and supply of labour** – The demand and supply of certain skills determine wage rates. Examples – High demand for IT professionals, financial analysts, scientists in pharma industry, etc., leads to higher wages. Similarly, oversupply of certain category of employees has resulted in steep fall in wages. Oversupply of management graduates and fall in wages.
5. **Cost of living** – When cost of living increases, the workers and union demand higher wages to offset the erosion of real wages. Many companies consider inflation rate, while working out salary increments.
6. **Capacity of bargaining** – A strong trade union is able to bargain and obtain higher wages for its members.
7. **Nature of job** – Jobs that require high levels of knowledge and skills, require high pay.
8. **Government policy and intervention influence wage determination.** Example – Payment of Wages Act (1936) and Minimum Wages Act (1948) assure proper payment of wages and avoiding all malpractices like non-payment, delayed payment and underpayment.
9. **Personal traits of the employee such as education, experience, and training are considered while fixing wages.**
10. **Productivity** – Here, worker's wages are linked to their productivity level. Wages are paid based on job performance.

### **Meaning of Salary**

A **Salary** is a regular payment by an employer to an employee for employment that is expressed either monthly or annually but is paid most commonly every month, especially to white-collar workers, managers, directors, and professionals.

A salaried employee or salaried employee is paid a fixed amount of money each month. Their earnings are typically supplemented with paid vacations and public holidays, healthcare insurance in countries without universal coverage, and other benefits.

### **Difference between salary and wage**

The terms salary and wages are commonly interchangeable, and in many contexts, their meanings are the same – but not always.

A **salary** does not change on a weekly or monthly basis. Salaries are calculated annually, divided by twelve, and paid out each month. In some countries people are paid double in December, in such cases their annual salary is divided by thirteen, with two months' pay included in their December paycheck.

**Wages**, on the other hand, are calculated on the number of hours worked that week, fortnight, or month. Employers pay wages either weekly, fortnightly, or monthly, and are linked to how many hours the employee worked. This is not the case with salaries – a salaried employee’s monthly income is always the same.

Managers, for example, are always paid a salary – never wages. Their monthly pay check does not change if they do overtime. Production-line employees and other blue-collar workers are usually paid overtime – their ‘wage’ varies according to how many hours they put in that week or month.

If an office worker’s income is Tk. 60,000 per year, we can say “His salary is Tk. 60,000 per year,” but it is unusual to say “His wage is Tk. 60,000 per year”.

Salary employees do not need to keep track of their hours in the way hourly workers do – there is no need for them to sign a time sheet.

Workers on wages are typically paid time-and-one-half for every hour of overtime work. At weekends and public holidays some employers may even pay double time. I remember when I was a student I once worked at a gas (UK: petrol) station on Christmas Day and was paid quadruple time.

### **Meaning of Payment**

According to Cambridge Dictionary “an amount of money received by a person that has been owed to them, and especially money received by an employee because of a pay rise at an earlier time.

According to the Bangladesh Labour Act, 2006, payment (or wages) encompasses all remuneration payable to a worker for their employment or work done, including overtime, holidays, and leave. This includes any sum payable due to lay-off, suspension, or termination of employment. The Act also outlines the time and manner of payment, specifying that wages must be paid within a certain timeframe and in legal tender.

*Payment* is the process of either giving money to someone, or of receiving money from someone. If you borrow money to buy a car, you’ll be expected to make a monthly *payment* for several years.

### **Review Questions:**

1. Define the wages and salary.
2. Describe the ten important factors influencing wages.
3. Distinguish between wages and salary.
4. What is payment?

## **Lesson 2: Laws Related to Wages and Salary**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define the special definition of wages.
- Describe the responsibility for payment and fixation of wages.
- Explain time of payment of wages.
- Discuss the deductions which may be made from wages.
- Explain the deductions from wages for absence from duty and for damage or loss.
- Elaborate the deductions from wages for services rendered.

### **Introduction:**

The laws governing wages and salaries in Bangladesh are primarily outlined in the Labour Act of 2006 and various regulations that address minimum wage, payment methods, and employee rights.

According to the Bangladesh Labour Act 2006

#### CHAPTER X

#### WAGES AND PAYMENT THEREOF

**Section 120. Special definition of wages.**- Unless there is anything repugnant in the subject or context, in this Chapter, "wages" means the wages as defined in section 2 (45), and also includes the following dues, namely:-

- (a) any bonus or other additional remuneration payable under the terms of employment;
- (b) any remuneration payable for leave, holiday or overtime work;
- (c) any remuneration payable under order of any Court or any award or settlement between the parties;
- (d) any sum payable under any agreement or this Act for the reason of termination of employment, whether by way of retrenchment, discharge, removal, resignation, retirement, dismissal or by whatever means; and
- (e) any sum payable due to lay-off or suspension.

**Section 121. Responsibility for payment of wages.**- Every employer shall be liable to pay to workers employed by him all wages required to be paid under this Act:

Provided that in the case of all other workers, except any worker employed by a contractor, the Chief Executive Officer, the manager or any other person responsible to the employer for the supervision and control of an establishment shall also be liable for such payment:

Provided further that if the wages of a worker employed by the contractor is not paid by the contractor, the wages of such worker shall be paid by the employer of the establishment, and the same shall be adjusted from the contractor.

**Section 122. Fixation of wage-periods.**

- (1) Every person liable for the payment of wages under section 121 shall fix wage periods in respect of such payment.
- (2) No wage period shall exceed 1 (one) month.

### **Section 123. Time of payment of wages.-**

- (1) The wages of a worker shall be paid before the expiry of the seventh working day following the last day of the wage period in respect of which the wages is payable.
- (2) Where the employment of a worker is terminated by retirement or by his retrenchment, discharge, removal by the employer or by termination of employment by the worker or otherwise, all wages payable to him shall be paid before the expiry of the thirtieth working day following the day of termination of his employment.
- (3) All wages shall be paid on the working day.

### **Section 125. Deductions which may be made from wages.-**

- (1) Except the cases for deduction authorized by this Act, no deduction shall be made from the wages of a worker.
- (2) Deductions from the basic wages of a worker may be made only in accordance with the provisions of this Act, and such deduction shall be of the following kinds only, namely:-
  - (a) fines imposed under section 25;
  - (b) deductions for unauthorized absence from duty;
  - (c) deductions for damage to or loss of any goods given under the custody of a worker or for loss of money for which he is liable to account, where such damage or loss is directly attributable to his neglect or default;
  - (d) deductions for house-accommodation provided by the employer;
  - (e) deductions for facilities and service approved by the Government and provided by the employer, other than the raw materials and equipments used for the requirement of employment;
  - (f) deductions for recovery of advances or loans or adjustment of overpayments of wages;
  - (g) deductions of income-tax payable by the worker;
  - (h) deductions by order of a Court or deduction by order of any authority competent to make such order of deduction;
  - (i) deductions for subscriptions to and for payment of advances from any provident fund to which the Provident Funds Act, 1925(Act No. XIX of 1925) applies or any recognized provident fund as defined in the Income-tax Ordinance, 1984 (Ordinance No. XXXVI of 1984) or any other provident fund approved by the Government;
  - (j) deductions for payment to any co-operative society approved by the Government or to an insurance scheme maintained by the Bangladesh Postal Department or any Government Insurance Company;
  - (k) deductions made with the written consent of the workers for the contribution to any fund or scheme constituted or framed by the employer with the approval of the Government for the welfare of the workers or the members of their families; and
  - (l) deduction of subscription for the CBA Union through check-off system.

### **Section 126. Deductions from wages for absence from duty.-**

- (1) Deductions from wages of a worker for absence from the place of worker under section 125 (2) (b) may be made only, when he, by the terms of his employment, is required to work, but he is absent for the whole or any part thereof.
- (2) The amount of such deduction shall, in no case, be more than the amount of wages payable to him for the period of absence:

Provided that, subject to any rules made in this behalf by the Government, if ten or more workers in a body absent themselves from work without notice and reasonable cause, wages of not exceeding eight days may also be added to the deduction from wages from every such worker which is payable to the employer in lieu of notice by the terms of his employment.

Explanation.- For the purposes of this section, a worker shall be deemed to be absent from the place of work if he, being present in such place, refuses to work in pursuance of a stay-in-strike or for any other unreasonable cause. It shall also be applicable to an officer of the trade union.

### **Section 127. Deductions from wages for damage or loss.-**

- (1) Any deduction under section 125(2) (c) shall not exceed the amount of the damage or loss caused to the employer by neglect or default of the concerned worker, and such deduction shall not be made until the worker is found guilty through proper enquiry in compliance with the principles of natural justice.
- (2) All such deductions and all realizations relating thereto shall be recorded in such register as may be prescribed by rules by the person responsible for the payment of wages.

**Section 128. Deductions from wages for services rendered.-** No deduction shall be made from the wages of a worker under section 125(2)(d) and (e) unless the house accommodation, facilities or services provided are accepted by the concerned worker according to the terms of employment or otherwise, and such deduction shall not, in no circumstances, exceed the value of the house accommodation, facilities or service provided, and in the case of deduction under clause (e) it shall be subject to such conditions as the Government may impose.

### **Conclusions**

Understanding the concepts of wages and salaries is crucial for both employees and employers. While wages and salaries are forms of compensation, they differ in their calculation and implications. Factors like market demand, economic conditions, and public choice theory influence wages, while minimum wages, fair wages, and living wages aim to ensure basic living standards and well-being. Linking wages to productivity, effective human resource management, and cooperative trade unions are essential for sustainable wage policies and overall economic health.

**Review Questions:**

1. Define the special definition of wages.
2. Describe the responsibility for payment and fixation of wages.
3. Explain time of payment of wages.
4. Discuss the deductions which may be made from wages.
5. Explain the deductions from wages for absence from duty and for damage or loss.
6. Elaborate the deductions from wages for services rendered.



# CONCILIATION AND ARBITRATION

# 9

## Unit Highlights

- Lesson 1: Introduction to Conciliation and Arbitration
- Lesson 2: Collective Bargaining Agent
- Lesson 3: Alternative Disputes Resolution (ADR)

## Technologies Used for Content Delivery

- ❖ BOUTUBE
- ❖ BOU LMS
- ❖ WebTV
- ❖ Web Radio
- ❖ Mobile Technology with MicroSD Card
- ❖ BTV Program
- ❖ Bangladesh Betar Program

*In Bangladesh, arbitration provides a consensual, private mechanism for dispute resolution governed by the Arbitration Act, 2001, allowing parties to avoid court congestion and seek faster, more efficient settlements, while conciliation, primarily for industrial disputes under the Bangladesh Labour Act, 2006, involves a neutral third party (a conciliator) appointed by the government to help parties reach a mutually acceptable, non-binding settlement agreement. If conciliation fails, or parties disagree, industrial disputes can then be referred to arbitration.*



## **Lesson 1: Introduction to Conciliation and Arbitration**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- Define conciliation and arbitration.
- Explain the conciliation, arbitration and mediation process in Bangladesh.
- Discuss the various laws regarding disputes settlement, conciliation and arbitration

### **Introduction:**

Conciliation is a meeting between you, your lawyer, a representative of the insurance company, and a Department of Industrial Accidents conciliator. The conciliator will encourage everyone involved to resolve the matter voluntarily. They will try to avoid bringing the case before a judge.

### **Meaning conciliation with examples**

Typical examples of the types of issue dealt with in the conciliation process include claims for improvements in pay or conditions of employment, disciplinary cases, grading issues, disputes arising from proposed changes to the way work is done, company restructuring etc.

Conciliation is an alternative dispute resolution method in which an expert is appointed to resolve a dispute by convincing the parties to agree upon an agreement. That decision made by the arbitrator is binding in the same way as a court decision. However, a conciliator has no right to enforce his decisions.

### **Meaning of arbitration**

Arbitration is a formal process and can follow similar procedures to court proceedings where witnesses can be called and evidence can be presented to argue the parties' respective cases. Conciliation is an informal process and normally involves a 'round table' discussion. The process of arbitration is overseen by a professional arbitrator, who facilitates communication between two sides of a dispute. An arbitrator may or may not be an attorney, and many retired judges take positions as arbitrators. Often the most effective arbitrators have knowledge of, and experience in, the subject of the disputes they hear. For instance, an employment law attorney, or retired administrator in the state's employment division, may be effective in resolving an employment dispute.

### **How to Find Arbitration Services**

The truth is, anyone can claim the title of Arbitrator, since no specific qualifications or certification exists. Most people prefer to choose an arbitrator experienced in a specific field of law, or experts in the topic of the dispute. The first step qualified arbitration services is to contact local attorneys in the field to discover which arbitrators they use. The local bar association, and local trade unions often maintain lists of recommended arbitrators and arbitration services. Finally, the American Arbitration Association can provide a list of arbitrators in any area of the country, as well as procedures and additional information on arbitration.

## **Examples of Cases Settled in Arbitration**

Since arbitration became a popular method of settling disputes while avoiding overcrowded court calendars in the 1970s, many cases large and small have been settled by professional arbitrators. Many such cases involving large companies or large settlements have been highlighted on the news.

### **Midwest Airlines Flight Attendants Contract Dispute**

Following the 2009 Republic Airways Holdings purchase of Midwest Airlines, more than 400 Midwest Airlines flight attendants complained of a contract violation, as hundreds found themselves laid off in favor of non-Midwest employees paid as much as 70 percent less. As it turned out, the Midwest flight attendants' union contract contained specific provisions protecting their jobs in the event the airline was purchased by another company. As these provisions had been violated, the Association of Flight Attendants (AFA) filed a grievance accusing Republic Airways of violating their contract.

The AFA struck a major victory in the March 2011 arbitration ruling that required a settlement to be negotiated between Republic Airways and the union to be in the best interest of the former Midwest flight attendants.

## **Arbitration and Conciliation in Bangladesh**

Conciliation in Bangladesh involves various processes aimed at resolving disputes and conflicts, particularly in legal and social contexts.

In Bangladesh, conciliation is a mandatory step before a notice of strike can be issued. This process aims to resolve disputes between employers and employees through negotiation.

### **Conciliation Process in Bangladesh:**

**Initiation:** Either party (employer or employee) can request conciliation when a dispute arises.

**Role of the Ministry:** The Ministry of Labour and Employment typically oversees the conciliation process.

**Timeframe:** The conciliation must occur within a specified period, usually 30 days, to encourage timely resolution.

**Outcome:** If the conciliation fails, the parties may proceed to issue a notice of strike.

### **Legal Framework of Conciliation:**

The Labour Act of 2006; Section 210 (7) governs the conciliation process in Bangladesh. As (7) the parties to the dispute shall appear before the Conciliator in person or through the representatives nominated and authorized by them to enter into an agreement binding on both the parties on such date and at such time as the Conciliator may specify. It outlines the rights and responsibilities of both parties during negotiations.

## **The Arbitration Process in Bangladesh**

The arbitration process in Bangladesh is a structured method aimed at resolving disputes outside the traditional court system. Initially, the process begins with the initiation of arbitration proceedings, which typically occurs when one party serves a notice to the other,

expressing the desire to arbitrate according to the terms agreed upon in the relevant contract. This notice should outline the nature of the dispute and the specific issues to be resolved.

Once arbitration is initiated, the next step involves the appointment of arbitrators. The parties usually have the autonomy to select their arbitrators unless the arbitration agreement specifies otherwise. In many cases, the arbitration panel consists of one or three arbitrators. If the parties cannot agree on an arbitrator, a recognized institutional body may step in to appoint one, ensuring impartiality and expertise in the relevant field.

Following the appointment, the arbitration tribunal plays a crucial role in managing the proceedings. The tribunal establishes the procedural rules, which can vary widely depending on the arbitration framework chosen, such as the Arbitration Act of 2001 in Bangladesh. This includes scheduling hearings, setting timelines for submissions, and ensuring that both parties have equitable opportunities to present their cases.

During the hearings, both parties present evidence, witness testimonies, and legal arguments. The arbitration tribunal is responsible for maintaining order and addressing any procedural issues that may arise. After the hearings conclude, the tribunal deliberates and issues a final award, which is binding on both parties. The award outlines the tribunal's decision regarding the dispute, including any financial reparations or specific actions required from either side.

Overall, the arbitration process in Bangladesh offers a streamlined, efficient alternative to litigation, allowing parties to resolve disputes in a confidential and specialized manner while ensuring that their rights are protected throughout the proceedings.

### **The Mediation Process in Bangladesh**

Mediation in Bangladesh has emerged as an effective alternative dispute resolution (ADR) mechanism aimed at resolving conflicts outside traditional court settings. The mediation process typically begins when parties involved in a dispute voluntarily agree to resolve their differences through mediation. This agreement can be spurred by various factors, including the desire for a quicker resolution, reduced costs, or a preference for confidentiality. Disputes can be referred to mediation by courts, regulatory bodies, or by the parties themselves, often at the suggestion of a legal advisor.

The role of a mediator is crucial in facilitating discussions between disputing parties. A mediator is a neutral third party who assists the involved individuals in reaching a mutually acceptable agreement. Mediators possess skills in negotiation, active listening, and conflict resolution. Their primary objective is to create a safe and constructive environment where participants feel comfortable expressing their concerns. Mediators do not make decisions for the parties but rather guide them toward finding common ground.

The techniques used in mediation can significantly influence the effectiveness of the process. Common methods include active listening, open-ended questioning, and reframing contentious issues. By encouraging parties to articulate their viewpoints, a mediator helps uncover underlying interests that may not have been initially apparent. Mediation sessions usually consist of joint meetings where all parties convene, followed by private caucuses that allow individuals to discuss matters confidentially with the mediator. This combination enables effective communication and fosters an atmosphere conducive to settlement.

As negotiations unfold, the goal is to reach a settlement agreement that reflects the needs and interests of all parties involved. This outcome is documented formally, providing a binding resolution to the dispute. Overall, mediation's structured approach, emphasis on collaboration, and flexibility make it an appealing option for conflict resolution in Bangladesh.

According to the Bangladesh Labour Act 2006 various laws regarding settlement of disputes, labour court, labour appellate tribunal, legal procedure etc.

## **SETTLEMENT OF DISPUTE, LABOUR COURT, LABOUR APPELLATE TRIBUNAL, LEGAL PROCEEDINGS, ETC.**

### **209. Raising of industrial dispute.-**

No industrial dispute shall be deemed to exist, unless it is raised by an employer or by a collective bargaining agent in accordance with the provisions of this Chapter.

### **210. Settlement of industrial dispute.-**

- (1) If at any time an employer or a collective bargaining agent finds that an industrial dispute is likely to arise between the employer and the workers, the employer or the collective bargaining agent shall communicate his or its views in writing to the other party.
- (2) Within 15 (fifteen) days of the receipt of a communication under sub section (1), the party receiving it shall, in consultation with the other party, arrange a meeting with it for collective bargaining through discussion on the issue raised in the communication with a view to reaching an agreement, and such meeting may be held between the representatives of the parties authorized in this behalf.
- (3) If the parties, after holding discussion, reach a settlement on the issues discussed, a memorandum of settlement shall be recorded in writing and signed by both the parties, and a copy thereof shall be forwarded by the employer to the Government, the Director General and the Conciliator.
- (4) If- (a) (b) the party receiving a communication under sub-section (1) fails to arrange a meeting with the other party within the time specified in sub-section (2), such other party, or no settlement is reached through dialogue within a period of 1 (one) month from the date of the first meeting for negotiation, or, such further period as may be agreed upon in writing by the parties, any of the parties, may, within 15 (fifteen) days from the expiry of the period mentioned in sub section (2) or, clause (b) of this sub-section, as the case may be, report the matter to a competent Conciliator mentioned in sub-section (5) and may request him in writing to settle the dispute through conciliation.
- (5) For the purposes of this Chapter, the Government shall, by notification in the official Gazette, appoint such number of persons as it considers necessary, as Conciliator for such specific area or establishment or industry as may be specified in the notification, and the Conciliator appointed for the area or establishment or industry concerned shall take up any request for conciliation under sub-section (4).

- (6) The Conciliator shall, within 10 (ten) days of receipt of the request as aforesaid, start conciliation, and shall call a meeting between both the parties to bring about a settlement.
- (7) The parties to the dispute shall appear before the Conciliator in person or through the representatives nominated and authorized by them to enter into an agreement binding on both the parties on such date and at such time as the Conciliator may specify.
- (8) If any settlement of the dispute is arrived through conciliation, the Conciliator shall submit a report thereon to the Government together with a memorandum of settlement signed by both the parties.
- (9) If no settlement is arrived at within 30 (thirty) days of receipt of any request for settlement of any dispute by the Conciliator, the conciliation shall fail, or the conciliation may be continued for further period agreed upon in writing by both the parties.
- (10) If the conciliation fails, the Conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator.
- (11) If the parties do not agree to refer the dispute to an Arbitrator, the Conciliator shall, within 3 (three) days of failure of the conciliation issue a certificate to the parties to the dispute to the effect that it has failed.
- (12) If the parties agree to refer the dispute to an Arbitrator, they shall make a joint request in writing for settlement of the dispute to an Arbitrator agreed upon by them.
- (13) An Arbitrator referred in sub-section (12) may be a person from the panel of Arbitrators prepared by the Government in this behalf, or any other person agreed upon by the parties.
- (14) The Arbitrator shall give his award within 30 (thirty) days from the date of receipt of the request for arbitration or within such further period as may be agreed upon in writing by the parties.
- (15) When an award is given by the Arbitrator, he shall forward one copy thereof to the parties and another copy to the Government.
- (16) The award of the Arbitrator shall be final and no appeal shall lie against it.
- (17) An award shall be valid for such period not exceeding two years as may be fixed by the Arbitrator.
- (18) The Director General may, if he deems fit in the interest of settlement of a dispute, at any time, take over any conciliation proceedings from any Conciliator and proceed to conciliate the dispute himself, or transfer such proceedings to any other Conciliator, and in such a case the other provisions of this section shall apply.
- (19) Notwithstanding anything contained in this section, the collective bargaining agent of the establishments, in respect of which a trade union of employers or a federation of trade unions of employers has been registered shall communicate with such trade union of employers or federation regarding any industrial dispute and any agreement regarding settlement of industrial dispute made with such trade union of employers or federation shall be binding upon all the employers and workers of the establishments.

**Review Questions:**

1. Define conciliation and arbitration.
2. How to find arbitration service? Explain with example.
3. Explain the conciliation, arbitration and mediation process in Bangladesh.
4. Discuss the various laws regarding disputes settlement, conciliation and arbitration.

## Lesson 2: Collective Bargaining Agent

### Learning Objectives

Upon completion of this lesson, you will be able to:

- Define collective bargaining and its legal framework.
- Define collective bargaining agent and its process.
- Explain the challenges and importance of bargaining agent in Bangladesh.
- Discuss the various laws regarding collective bargaining agent.

### Introduction:

Collective bargaining laws in Bangladesh are vital for regulating relationships between employers and employees, promoting industrial harmony, and securing workers' rights. These laws facilitate negotiations between unions and employers, ensuring that labor disputes are resolved amicably. In a developing country like Bangladesh, where labor-intensive industries dominate, collective bargaining is essential for maintaining fairness and stability in the workforce.

### Definition of Collective Bargaining

The union may negotiate with a single employer (who is typically representing a company's shareholders) or may negotiate with a group of businesses, depending on the country, to reach an industry-wide agreement. Collective bargaining consists of the process of negotiation between representatives of a union and employers (generally represented by management, or, in some countries such as Austria, Sweden, Belgium, and the Netherlands, by an employers' organization) in respect of the terms and conditions of employment of employees, such as wages, hours of work, working conditions, grievance procedures, and about the rights and responsibilities of trade unions. The parties often refer to the result of the negotiation as a collective bargaining agreement (CBA) or as a collective employment agreement (CEA).

The Industrial Relation Ordinance, 1969 provides the use of "Collective Bargaining Agent". According to section 2(v) of the ordinance, "Collective bargaining agent in relation to establishment or industry, means the trade union of workmen in the establishment, as the case may be, industry in the matter of collective bargaining". In collective bargaining, a give-and-take principle is invariably involved.

According to ILO, "Collective Bargaining is a fundamental right. The right to Collective Bargaining forms an integral part of the ILO declaration on fundamental Principles (1998)."

### Legal Framework for Collective Bargaining in Bangladesh

The legal framework for collective bargaining in Bangladesh is embedded within the country's labor laws. The most notable of these laws is the Bangladesh Labour Act of 2006, which outlines the rights of workers to organize and engage in collective bargaining.

- **Bangladesh Labour Act, 2006:** This comprehensive legislation governs employment conditions, trade union activities, and dispute resolution. It defines collective bargaining agents (CBAs) and provides the procedures for registering trade unions, forming CBAs, and negotiating with employers. The act also outlines the legal protections offered to workers who engage in collective bargaining.

- **The Industrial Relations Ordinance, 1969:** Although replaced by the Bangladesh Labour Act, 2006, this ordinance laid the groundwork for collective bargaining laws in Bangladesh. Its influence continues to shape modern labor practices and policies.
- **International Labour Organization (ILO) Conventions:** Bangladesh has ratified several ILO conventions, including the Freedom of Association and Protection of the Right to Organize Convention (C087) and the Right to Organize and Collective Bargaining Convention (C098). These conventions emphasize the importance of collective bargaining and protect workers' rights to organize.

### **Collective Bargaining Agents (CBAs)**

In Bangladesh, a Collective Bargaining Agent (CBA) is the trade union or group of unions authorized to represent the employees of an establishment in collective bargaining negotiations. The formation of CBAs is regulated by the Bangladesh Labour Act, which outlines the steps required for their recognition.

The CBA's primary function is to negotiate with the employer on behalf of the employees. These negotiations can cover a wide range of issues, including:

- **Wages and salaries**
- **Working hours**
- **Employee benefits**
- **Health and safety regulations**
- **Job security and conditions of employment**

The success of a CBA depends on its ability to represent workers effectively, maintain strong relationships with employers, and adhere to the legal requirements set out by Bangladesh's collective bargaining laws.

### **Collective Bargaining Process in Bangladesh**

The collective bargaining process in Bangladesh involves several steps:

1. **Formation of a Trade Union:** Workers in an establishment can form or join a trade union to represent their interests. Once registered, the trade union can apply to become the recognized CBA.
2. **Election of a CBA:** When there are multiple unions within an establishment, an election is held to determine which union will serve as the CBA. This ensures that the majority of workers are adequately represented.
3. **Initiation of Negotiations:** The CBA initiates negotiations with the employer to address the workers' concerns. Both parties are expected to negotiate in good faith, meaning they should genuinely seek a mutually beneficial agreement.
4. **Drafting of a Collective Bargaining Agreement (CBA):** After successful negotiations, a collective bargaining agreement is drafted. This agreement is a legally binding contract that outlines the terms of employment agreed upon by both parties.
5. **Registration of the Agreement:** The collective bargaining agreement must be registered with the appropriate government authority to ensure it is enforceable.

6. **Implementation and Monitoring:** Once the agreement is in effect, both parties must adhere to its terms. The CBA is responsible for ensuring that the employer complies with the agreement, and disputes may arise if either party fails to meet their obligations.

### **Challenges in Collective Bargaining in Bangladesh**

While collective bargaining laws in Bangladesh offer a structured approach to labor negotiations, there are several challenges that impede the effectiveness of the process:

1. **Lack of Awareness:** Many workers in Bangladesh, particularly in the informal sector, are unaware of their rights to collective bargaining. This lack of knowledge makes it difficult for them to form or join unions, hindering their ability to negotiate better working conditions.
2. **Weak Unionization:** Union membership in Bangladesh is relatively low, especially in certain industries like garment manufacturing. Weak unions often struggle to negotiate effectively with employers, leading to inadequate labor protections.
3. **Employer Resistance:** In some cases, employers may resist engaging in collective bargaining due to fears of increased labor costs or disruptions to their operations. This resistance can lead to strained relationships and industrial unrest.
4. **Limited Government Oversight:** While Bangladesh has laws in place to regulate collective bargaining, enforcement remains a challenge. Government agencies responsible for overseeing labor disputes may lack the resources or capacity to intervene effectively when issues arise.
5. **Violence and Intimidation:** In some instances, efforts to organize collective bargaining may be met with violence or intimidation, particularly in industries with a history of labor conflicts.

### **The Importance of Collective Bargaining for Bangladesh's Workforce**

Despite the challenges, collective bargaining plays a crucial role in improving labor conditions in Bangladesh. It empowers workers by giving them a voice in the workplace and ensuring that their concerns are addressed.

- **Improved Working Conditions:** Through collective bargaining, workers can negotiate better wages, benefits, and working conditions, leading to improved job satisfaction and productivity.
- **Labor Peace:** Collective bargaining helps prevent industrial disputes by facilitating open communication between employers and employees. This promotes stability in the workforce and reduces the likelihood of strikes or other disruptions.
- **Economic Growth:** A stable and satisfied workforce contributes to economic growth by increasing productivity and reducing labor turnover. In industries such as manufacturing and textiles, this stability is crucial for maintaining Bangladesh's competitive advantage in global markets.

**According to the labour Act 2006 collective bargaining related following various laws are:**

**Section 202. Collective bargaining agent.-**

- (1) Where there is only one trade union in an establishment, the trade union shall be deemed to be the collective bargaining agent for such establishment.
- (2) Where there are more than one trade unions in an establishment the unions shall, by nominating an election commissioner from amongst themselves, take steps for election of a collective bargaining agent (CBA) or the Director General shall, upon an application made in this behalf by any such trade union or by the employer, hold a secret ballot, within a period of 120 (one hundred and twenty) days from the date of receipt of such application, to determine as to which trade union shall be the collective bargaining agent for the establishment.
- (3) Upon receipt of an application under sub-section (2), the Director General shall, by a notice in writing, call upon all trade unions of the establishment to let him know, within such time, not exceeding 15 (fifteen) days, as may be specified in the notice, whether or not they shall contest in a secret ballot.
- (4) If a trade union fails to inform the Director General within the time specified in the notice given under sub-section (3), of anything as to its contest in the secret ballot, it shall be presumed that it shall not contest in such ballot.
- (5) If no trade union inform the Director General within the time specified in the notice of anything as to its contest in the secret ballot, the trade union which has made the application under sub-section (2), shall be declared to be the collective bargaining agent for that establishment, if not less than one-third of the total number of workers employed in the establishment are members of that trade union.
- (6) Every employer shall, on being so required by the Director General, submit to him a list of all the workers, except substitute and casual workers, employed in his establishment for not less than a period of 3 (three) months, and the list shall contain the following particulars, namely:- (i) (ii) (iii) (iv) (v) the name of every worker; the names of his father and mother and age (the name of spouse, if applicable, shall also be given); the name of his branch or department; the name of his work place; the number of his ticket and date of employment.
- (7) On being so required by the Director General, every employer shall supply requisite number of additional copies of the list mentioned in sub-section (6) and shall provide necessary facilities for verification of the list so submitted.
- (8) On receipt of the list of workers from the employer, the Director General shall send a copy of the list to each contesting trade union and shall affix a copy thereof in a conspicuous place of his office and another copy in a conspicuous place of the establishment concerned together with a notice inviting objections to the list, if any, to be submitted to him within such time as may be specified therein.
- (9) If the Director General receives any objection within the specified time, he shall dispose of it after holding necessary enquiry.
- (10) The Director General shall make such necessary amendment or alteration in the list of workers submitted by the employer as may be required by any decision given by him under sub-section (9).

- (11) After any amendment or alteration made under sub-section (10), or where no objection is received by the Director General within the specified time, after expiry of such time, he shall prepare a final list of workers employed in the 85 Bangladesh Labour Act, 2006 establishment concerned and duly certify it and send copies thereof to the employer concerned and every contesting trade union at least 7 (seven) days prior to the date fixed for poll.
- (12) The list of workers prepared and certified under sub-section (11) shall be deemed to be the list of voters, and the worker whose name appears in that list shall be entitled to vote in the poll to determine the collective bargaining agent.
- (13) Every employer shall provide all such facilities in his establishment as may be required by the Director General for the conduct of the poll, but shall not interfere with, or in any way influence the voting.
- (14) No person shall canvas for vote within 45 (forty five) metres of the polling stations.
- (15) For the purpose of holding secret ballot to determine the collective bargaining agent, the Director General shall- (a) fix the date for the poll, and communicate it to every contesting trade union and the employer; (b) (c) (d) (e) set up ballot boxes for voting in every polling station on the date fixed for the poll and seal it in the presence of the representatives of the contesting trade unions if any; conduct the poll at the polling station and facilitate the representatives of the contesting trade unions to present at that station; after the conclusion of the poll, open the ballot boxes in the presence of the representatives of the contesting trade unions, if they are present, and count the votes; and after the conclusion of counting votes, declare the trade union which has received the highest number of votes to be the collective bargaining agent.
- (16) Where a trade union is declared to be the collective bargaining agent for an establishment under sub-section (15)(e), it shall be the collective bargaining agent for that establishment for 2 (two) years from the date of such declaration, and no application for the determination of a new collective bargaining agent for such establishment shall be entertained during this period: Provided that in the case of a group of establishments, the duration of a collective bargaining agent shall be of 3 (three) years.
- (17) Notwithstanding anything contained in sub-section (16), where a trade union desires to be the next collective bargaining agent for an establishment after the expiry of the term of an existing collective bargaining agent, or where an existing collective bargaining agent desires to continue as such for the next term also, it may make an application to the Director General, not earlier than 150 (one hundred and fifty) days and not later than 120 (one hundred and twenty) days immediately before the expiry of the term of the existing collective bargaining agent, to hold a secret ballot to determine the next collective bargaining agent for the establishment.
- (18) Where an application is made under sub-section (17), a secret ballot to determine the next collective bargaining agent shall be held within 120 (one hundred and twenty) days from the date of receipt of such application, but the trade union declared to be the next collective bargaining agent on the basis of the result of the poll shall be the collective bargaining agent from the date of expiry of the term of the existing collective bargaining agent.

- (19) Where after receiving an application under sub-section (17), the next collective bargaining agent for an establishment could not be determined before the expiry of the tenure of the existing collective bargaining agent, due to reasons beyond the control of the Director General, the existing collective bargaining agent 86 Bangladesh Labour Act, 2006 shall continue to function as the collective bargaining agent in that establishment till the new collective bargaining agent is determined.
- (20) Where no application is received under sub-section (17), the Director General shall declare the date of new election within 120 (one hundred and twenty) days following the expiry of the tenure of the existing collective bargaining agent, and the existing collective bargaining agent shall continue to function as collective bargaining agent for the concerned establishment for the interim period.
- (21) Any dispute arising out of any matter in relation to an election for determination of collective bargaining agent shall be referred to the Labour Court, and the decision of the Court thereon shall be final.
- (22) A collective bargaining agent may, without prejudice to its own position, plead any federation of trade unions, of which it is a member, as a party to any proceeding under this Chapter to which it itself is a party.
- (23) A collective bargaining agent in relation to an establishment to which it relates shall be entitled to- (a) (b) (c) (d) (e) bargain with the employer in matters of the state of jobless, conditions of work or environment of work of the workers; represent all or any of the workers in any proceedings; give notice of, and declare, a strike in accordance with the provisions of this Chapter; nominate representatives of the workers in any welfare institution or provident fund and in the board of trustees of the workers participation fund established under Chapter XV; and conduct cases on behalf of any individual worker or a group of workers with their consent under this Act.
- (24) The provisions of this section shall also apply to the election or determination of collective bargaining agent in a group of establishments declared under this Act.
- (26) Every employer shall, in the manner prescribed by rules, allot an office room for the elected collective bargaining agent (CBA) in his establishment.

**Section 203. Federation of trade unions to act as collective bargaining agent in certain cases.-**

- (1) Notwithstanding anything contained in this Chapter, a federation of trade unions shall be deemed to be the collective bargaining agent in any establishment or group of establishments, if any of its federated unions in that establishment, by a resolution passed in the meeting of its executive committee authorizes it to act as the collective bargaining agent in that establishment on its behalf:  
 Provided that no such authorization shall be permissible, unless the constitutions of the federation and of the federated union provides for such authorization.
- (2) A federation of trade unions shall act as the collective bargaining agent only in the establishment or group of establishments in which any of its federated union is a collective bargaining agent
- (3) Nothing in this section shall apply in the case of a federation of trade unions on national level formed and registered under section 200(5).

**Review Questions:**

1. Define collective bargaining and its legal framework.
2. Define collective bargaining agent and its process.
3. Explain the challenges and importance of bargaining agent in Bangladesh.
4. Discuss the various laws regarding collective bargaining agent.

## **Lesson 3: Alternative Disputes Resolution (ADR)**

### **Learning Objectives**

Upon completion of this lesson, you will be able to:

- What is ADR. Explain the types of ADR.
- Describe the ADR framework of Bangladesh. .
- Discuss the ADR practices in Bangladesh
- Explain the advantages and disadvantages in Bangladesh.

### **Introducing A.D.R.**

ADR, or Alternative Dispute Resolution, refers to any method of resolving disputes without going to court, including processes like mediation, arbitration, and negotiation. These methods are often confidential, less formal, and less stressful than litigation, with the goal of achieving a faster, more cost-effective, and potentially more satisfactory outcome for the parties involved.

### **Different types of ADR in Bangladesh:**

There are three streams of ADR in Bangladesh:

- Extra- judicial or community based ADR (informal);
- ADR in Quasi-formal systems; and
- ADR in formal legal system.

All these ADR modes have been discussed in different chapters in this book with their merits and demerits. Formal ADR in different laws are shown in the diagram below:

Formal ADR in Bangladesh

Code of Civil Procedure (sec. 89A, 89B, 89C)

Family courts Ordinance, 1985 (sec. 10)

Muslim Family Laws Ordinance 1961 (sec. 7, 8)

ArtharinAdalat Ain, 2003 (sec. 21, 22)

Negotiation, Conciliation, Arbitration (sec. 210 of the Labour Code, 2006)

Pre-Litigation

Part of litigation

### **Informal ADR in Bangladesh**

Informal ADR in Bangladesh includes traditional shalish and NGO modified Shalish. Quasi-formal ADR includes village court and Board of Conciliation have originated from the informal shalish system and this is why they all have been shown in the following single diagram.

### **Legal framework of ADR in Bangladesh**

Bangladesh has various laws providing for Alternative Dispute Resolution (ADR) within and outside the formal court system, such as the Finance Act, 2011, which allows revenue disputes to be resolved through a facilitator appointed by the National Board of Revenue (NBR). ADR is also present in the Code of Civil Procedure,

1908, through mediation under Section 89A, the Money Loan Court Act, 2003, the Family Court Act, 2023, the Village Court Act, 2006, and the Labour Act, 2006 for industrial disputes. The goal is to offer speedy, consensual, and cost-effective ways to resolve conflicts outside of prolonged court litigation.

Key Legislation and Areas Covered

- **Customs Act, 1969 (via Finance Act, 2011):**  
Provides ADR for customs disputes, allowing importers/exporters to apply for a consensual settlement through a facilitator outside the formal court process.
- **Code of Civil Procedure, 1908:**  
Section 89A introduces a system of mediation outside the court to resolve civil suits.
- **Money Loan Court Act, 2003:**  
Mandates a settlement conference where the judge facilitates an agreement between parties.
- **Family Court Act, 2023:**  
Empowers family courts to facilitate compromises and settlements between parties during pre-trial hearings and after testimonies.
- **Village Court Act, 2006:**  
Establishes village courts to resolve local civil and criminal disputes outside the formal judicial system.
- **Labour Act, 2006:**  
Includes provisions for conciliation, negotiation, and arbitration for industrial disputes, aiming to foster industrial peace.

**ADR in different Bangladeshi Laws:**

1. The Code of civil procedure, 1908.
2. The Code of Criminal procedure, 1898.
3. The Artha Rin Adalat Ain, 2003.
4. The arbitration Act, 2001.
5. The Bankruptcy Act, 1997.
6. The Muslim Family Court Ordinance, 1985.
7. The Muslim Family Law Ordinance, 1961.
8. The Gram Adalat Ain, 2006.
9. The Settlement of Disputes (Paura Area) Board Act, 2004.

### **1. ADR Under code of civil procedure 1908**

**89B. Arbitration.-** (1) If the parties to a suit, at any stage of the proceeding, apply to the Court for withdrawal of the suit on ground that they will refer the dispute or disputes in the suit to arbitration for settlement, the Court shall allow the application and permit the suit to be withdrawn; and the dispute or disputes, thereafter, shall be settled in accordance with Salish Ain, 2001 (Act No. 1 of 2001) so far as may be applicable:

Provided that, if, for any reason, the arbitration proceeding referred to above does not take place or an arbitral award is not given, the parties shall be entitled to re-institute the suit permitted to be withdrawn under this sub-section.

(2) An application under sub-section (1) shall be deemed to be an arbitration agreement under section 9 of the Salish Ain, 2001 (Act No. 1 of 2001).

**89C. Mediation in Appeal.-** (1) An Appellate Court may mediate in an appeal or refer the appeal for mediation in order to settle the dispute or disputes in that appeal, if the appeal is an appeal from original decree under Order XLI, and is between the same parties who contested in the original suit or the parties who have been substituted for the original contesting parties.

(2) In mediation under sub-section (1), the Appellate Court shall, as far as possible, follow the provisions of mediation as contained in section 89A with necessary changes {mutatis mutandis) as may be expedient.

## **2. Modes of ADR in Artharin Adalat Ain:**

The Act provides for single mode of ADR and this is mediation s defined and described in section 22 of the Act. Unlike before the adoption of the process of mediation is compulsory after Submission of written statement. Once the written statement is submitted, the court must send the suit to appointed lawyer or to ite parties to settle the suit matter by way of mediation.

## **3. ADR in Criminal Cases:**

ADR in criminal cases may be of two types: compounding of offences and plea bargaining. In Bangladesh section 345 of the Criminal Procedure Code provides for in-built provisions for compounding although there is no such provision of plea bargaining in the Code.

## **4. ADR in the village court Act 2006:**

Section 5 specifies hat a Village Court shall consist of a Chairman and four members. Of these four members two are to be nominated by each of the parties to the dispute. One of two members to be nominated by each party should be a member of die Union Parishad concerned. However, any party to dispute, with the permission of the Chairman, may nominate any person other than the members of the Union Parishad members of the Village Court.

Sub-section (2) of section 5 states that the Chairman of the Union Parishad shall be the Chairman of the Village Court. However if the Chairman is unable to act as Chairman for any reason, or if his impartiality is challenged by any party to the dispute, any other member of the Union Parishad will become Chairman of the Village Court.

## **5. ADR in the Muslim Family court ordinance 1985:**

1. The Family Courts Ordinance 1985 provides the courts with arms to exercise mediation in suits pending before it both at the pre trial stage under section 10 and after close of evidence following framing of issues and fixing a date of preliminary hearing under section 13.
2. Another reason for recommending mediation in Family Courts is that it involves the direct participation of the parties in dispute. They are required to meet along with their legal representatives and other interested persons at confidential meetings at any time during the law suit in the presence of a neutral third party who, a judge, is a trained facilitator at conflict resolution.

## **6. ADR in Labor Act 2006 :**

### **Negotiation:**

If a dispute is likely between an employer and an employee, the employer or the CBA shall communicate the same in writing to the other party. Within ten days the parties will try to resolve the matter by way of negotiation; if a settlement reached, a memorandum shall be recorded accordingly (Section 210(1, 2, 3)). Under sub-section 210(4) 30 days time is allowed to complete negotiation.

### **Conciliation:**

Failing a negotiation under sub-section 210(1, 2), any party may report to the conciliator that the negotiation have failed and request the conciliator in writing to conciliate the dispute and conciliator shall, on receipt of such request, proceed to conciliate in the dispute. Under section 210(6) the conciliator has ten days time for conciliation.

### **Arbitration:**

If conciliation fails the conciliator shall try to persuade the parties to agree to refer to the dispute to an Arbitrator. In case the parties agree, they shall make a joint request in writing for reference of the dispute to an Arbitrator agreed upon by them. The arbitrator shall give his award within thirty days from the date on which the dispute is referred to him or within such period as may be agreed upon by the parties. The award of the arbitrator shall be final and no appeal shall lie against it (section 210(16)).

## **7. ADR under the Muslim Family Laws Ordinance, 1961:**

Under this law provision for reconciliation or alternative dispute resolution through arbitration council has been provided for in three circumstances:

- (i) in case of polygamy under section 6;
- (ii) in case of giving talaq and making it effective under section 7; and
- (iii) in case of failure of the husband to provide maintenance of his wife under section

## **8. Basic ADR process :**

Negotiation, mediation and arbitration are the most common features of ADR techniques in Bangladesh. Let us discuss the three important ways of dispute resolution.

**Negotiation:** Negotiation is the process whereby the parties within the dispute seek to settle or resolve the dispute. The negotiation process provides the parties or disputants and opportunity to exchange ideas, identify the irritant points of differences, find a solution, and get commitment from each other to reach an agreement. Bargaining is a common feature of the negotiation process.

**Mediation:** Mediation is simply an extension of the negotiation process. Mediators are individuals experienced in the negotiation process who bring disputing parties together and make attempts to work out a settlement or agreement that both parties can accept or reject. Mediation is used for a wide ganrul of case types, including interpersonal, local business and national issues. Mediation is generally understood as a third party intervention between conflicting parties to promote reconciliation, settlement or compromise. Shalish. local process – combination of negotiation and mediation process, provides a traditional alternative to dispute resolution in a community and covers both civil and criminal cases of varying intensity and degree. Shalish is used in settling 60 to 70% of local disputes.

**Arbitration:** Next to mediation and negotiation, arbitration is another dispute resolution tool. In arbitration systems, the court authorizes a neutral person or a third party to resolve the dispute at the place of occurrence. The Arbitration Act of 1940 was introduced to settle disputes through this process. But the practice of arbitration by the courts is not popular.

### **Advantages of Alternative Dispute Resolution (ADR)**

There are some potential advantages of using ADR. Such as:

1. **Save Time:** A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.
2. **Save Money:** When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, and experts' fees.'
3. **Increase Control over the Process and the Outcome:** In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.
4. **Preserve Relationships:** ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.
5. **Increase Satisfaction:** In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

**Improve Attorney-Client Relationships:** Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

Because of these potential advantages, it is worth considering using ADR early in a lawsuit or even before you file a lawsuit,

### **Disadvantages of ADR**

Generally ADR are usually faster, and cheaper than litigation they are also private and informal when also compared to litigation and it gets both parties involved in the settlement process and the decisions are not necessarily final. However ADR does not always guarantee an agreed upon decision and with arbitration the decision is final. The problems of ADR are given below:

1. **Unequal Bargaining Power**– In certain situations one side is able to dominate the other, for example, employment and divorce cases, making the courts a better option for a weak party.
2. **Lack of Legal Expertise**– Where a dispute involves difficult legal points a mediator or arbitrator is unlikely to have the same legal expertise and knowledge as a judge.

3. **No System of Precedent**– It isn't easy to predict the outcome of a dispute decided through ADR as there is no system of precedent.
4. **Enforceability**– Most forms of ADR are not legally binding, making any award difficult to enforce.
5. **A Court action may still be required**– If using ADR fails to resolve the parties' dispute, court action may still be needed. This adds to the costs and delays compared to taking a dispute direct to the courts in the first place.
6. **No guaranteed resolution**–There is no guaranteed resolution. With the exception of arbitration, alternative dispute resolution processes do not always lead to a resolution. That means it is possible that you could invest the time and money in trying to resolve the dispute out-of-court and still end up having to go to court.

Though there are some disadvantages of ADR, it is the most easier and swiftest trial process in the judicial system of any country. So its popularity is increasing day by day.

### **Bangladesh Labour Act 2006 Section 211. Strike and lock-out.-**

- (1) The party which raises any industrial dispute may, within 15 (fifteen) days of receipt of the certificate of failure under section 210 (11), give a notice to the other party, of strike or lockout, as the case may be, in which the date of commencement of such strike or lockout shall be mentioned, which shall not be earlier than seven days and later than 14 (fourteen) days of the date of giving such notice, or the party raising such dispute may make an application to the Labour Court for adjudication of the dispute: Provided that no collective bargaining agent shall serve any notice of strike, unless 51 (fifty one) percent of its members give their consent to it through a secret ballot, specially held for that purpose, under the supervision of the Conciliator, in such manner as may be prescribed by rules.
- (2) If a strike or lock-out begins, either of the parties to the dispute may make an application to the Labour Court for adjudication of the dispute.
- (3) If any strike or lock-out lasts for more than 30 (thirty) days, the Government may, by order in writing, prohibit it: Provided that the Government may, by order in writing, prohibit a strike or lock-out at any time before the expiry of 30 (thirty) days if it is satisfied that the continuance of such strike or lock-out is causing serious hardship to the public life or is prejudicial to the national interest.
- (4) In case of any public utility service, the Government may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out.
- (5) If the Government prohibits a strike or lock-out under sub-section (3) or (4), it shall forthwith refer the dispute to the Labour Court for settlement.
- (6) The Labour Court shall, after giving both the parties to the dispute an opportunity of being heard, make such award as it deems fit as expeditiously as possible but not later than 60 (sixty) days from the date on which the dispute was referred to it: Provided that the Labour Court may, if it deems necessary, make an interim award on any matter of the dispute: Provided further that an award shall not be invalid due to delay in making such award.

- (7) An award of the Labour Court shall remain in force for such period as may be specified in the award, which shall not be more than 2 (two) years.
- (8) The strike or lock-out shall be prohibited in an establishment for a period of 3 (three) years from the date of commencement of production therein, if such establishment is a new one or is owned by foreigners or is established in collaboration with foreigners, but other provisions of this Chapter relating to resolution of any industrial dispute shall apply to such establishments.

## **Conclusions**

Collective bargaining laws in Bangladesh are essential for promoting fairness, equity, and stability in the workplace. By adhering to the legal framework set out in the Bangladesh Labour Act and other relevant laws, both employers and employees can work together to achieve mutually beneficial outcomes. While challenges remain, the importance of collective bargaining for improving labor conditions and fostering economic growth cannot be overstated. As Bangladesh continues to develop, strengthening the capacity of trade unions and ensuring the enforcement of collective bargaining laws will be crucial for advancing workers' rights and creating a more just and equitable society.

The key to success of A.D.R. in Bangladesh lies in the manner of its introduction. A.D.R. is no longer an unheard of concept of dispute resolution among judges, litigants and lawyers of Bangladesh. The Family Courts all over Bangladesh are actively engaged in A.D.R. The pilot family courts are only exclusively engaged in mediation, but other Assistant Judges, who received training in mediation, are also mediating apart from trying cases. The mediation output of all the Assistant Judges, taken together, is something to be proud of. The Ministry of Law only needs to collect, maintain and update all relevant statistics in this regard.

## **Review Questions:**

1. What is ADR. Explain the types of ADR.
2. Describe the ADR framework of Bangladesh. .
3. Discuss the ADR practices in Bangladesh
4. Explain the advantages and disadvantages in Bangladesh.