



Policy Brief

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Employment Injury Insurance in Bangladesh

The Case for Implementation of Employment Injury Insurance (EII) in Bangladesh

Key points

As a corollary of their responsibility to ensure safe working conditions for their workers, employers are responsible for providing fair, equitable and effective compensation to workers (and, in the event of death, of their survivors) for the loss of income suffered because of an accident or occupational disease and for their access to medical and allied care.

Bangladesh has still in force an employers' liability scheme. This Brief argues that it should engage in a transformative process towards an employment injury scheme where the risk attached to work-related injuries is shared across all sectors of activities.

► 1. Introduction to Employment Injury Protection

1.1 Employment Injury Protection: understanding its relevancy

The ILO estimates that worldwide each year over 2.3 million workers die at work from an occupational injury or disease. In addition, over 313 million workers are involved in non-fatal occupational accidents and 160 million workers in non-fatal work-related diseases. The economic burden is estimated at four per cent of the world's GDP per year.

As a corollary of their responsibility to ensure safe working conditions for their workers, employers are responsible for providing fair, equitable and effective compensation to workers (and, in the event of death, of their survivors) for the loss of income suffered because of an accident or occupational disease and for their access to medical and allied care.

The first generation of schemes to provide for compensation consisted of **"workmen's compensation schemes"**, under which the compensation of a worker or his/her surviving family dependants is a legal liability placed upon the employer. Since this placed the financial burden solely on employers, this often required employers to take out private insurance. Experience has shown, however, that even where such an obligation exists in law, the outcome of these schemes is often

sub-optimal for it belongs to injured workers (or their families) to obtain the relevant information related to their insurance claim and to undergo rigorous medical assessments, all of which leads to delays in accessing treatment and benefits. In addition, an employer may be reluctant to present a claim for fear of other legal implications. Due to the practical difficulties of ensuring effective coverage, many injured workers or dependants of deceased workers do not receive the compensation to which they are entitled by law, or which would be required to meet their needs.

In response to these deficiencies, many countries have replaced employers' liability provisions with **social insurance schemes**, which applies the no-fault principle and spread the costs of employment injury across society (or at least that part represented in the formal labour market) as a whole. Such schemes are the result of a trade-off between employers and workers. Employers collectively finance the employment injury insurance against the risk of work-related injury and in return, they are free from individual compensation responsibilities and lengthy court cases. Workers abandon the right to sue their employers because they have access to predictable, timely, fair and sufficient compensation. Employment injury insurance schemes provide better protection to employers and workers against work-related accidents, including large-scale ones. Well-functioning employment injury schemes are designed to benefit both workers and employers by providing reliable coverage with predictable, timely payments and reduced legal costs.

This shift in approach to employment injury protection has been reflected on the up-to-date standards adopted by the ILO on the issue.

1.2 International legal framework

According to ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) (Part VI), and the Employment Injury Benefits Convention, 1964 (No. 121), any condition that impacts negatively on health and which is due to a work accident or an occupational disease, and the incapacity to work and earn, that results from it, whether temporary or permanent, total or partial, must be covered. The protection also includes, where a worker dies as a consequence of a work-related injury, the loss of support suffered by her or his dependants. Accordingly, the provision must include medical and allied care, with a view to maintaining, restoring or improving the health of the injured person and her or his ability to work and attend to personal needs. A cash benefit must also be paid to injured persons or the deceased's dependants, as the case may be, at a guaranteed level and on a periodic basis, whereby the benefit is related to the age and the wage of the worker. It is up to the ratifying countries to define the notion of industrial accident. These countries must also determine a list of employment-related diseases that has to include at least the diseases mentioned in Schedule 1 to Convention No. 121.

Bangladesh ratified one of the first-generation ILO Convention on work injury protection; namely Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) which was considered by the Standards Review Mechanism Tripartite Working Group (SRM TWG) to be outdated. The Government is encouraged to ratify Conventions No. 121 and/or No. 102 (Part VI) as up-to-date instruments in the subject area of employment injury. Since 2015, Bangladesh has committed to work on the establishment of a fully nationally financed employment injury insurance scheme in keeping with relevant ILO conventions and, as appropriate, Bangladesh's legislative and regulatory regime.

► 2. Employment Injury Compensation System in Bangladesh: Challenges and Opportunities

2.1 Present set-up

In Bangladesh, the employment injury compensation system falls within the so-called employers' liability regime prescribed in chapter 12 of the Bangladesh Labour Act 2006 (BLA). The enactment of the BLA in 2006 was a major development in labour legislation in Bangladesh, including on employment injury compensation. Workmen's compensation dates back to 1923, when Bangladesh was part of British India, in which year the Workmen's Compensation Act was adopted. In the BLA, according to section 150, each employer is responsible for compensating workers with employment injuries or occupational disease (or their dependents in case of death). Chapter 12 of the BLA applies to all 'workers' (as defined in BLA) other than university teachers as stipulated in Section 1(4)(k) of the BLA. Benefits cover medical care, temporary incapacity, permanent disability, and death. Although the law specifically stresses the responsibility of employers to provide medical care, nothing is specified in relation to physical and vocational rehabilitation. In case of temporary incapacity, the worker should receive a monthly payment from employers, with a maximum of one year in case of accidents and two years in case of occupational disease. For the first two months, 100 percent of monthly wages should be paid. Then, two-third of monthly wages for the following two months and 50 percent for subsequent months should be paid. In case of prolonged occupational disease, compensation is paid at the rate of half of monthly wages during the period of disablement, with a maximum of two years. In case of permanent disability or death, employers should pay a lump-sum prescribed in the Fifth Schedule of the BLA. In case of death the amount is Tk 2,00,000 and in case of permanent total disablement Tk 2,50,000. For permanent partial disablement, the amount is a percentage of the benefit for total permanent disablement, depending on the nature of injury as stipulated in Section 151. The same lump sums are paid irrespective of the wage and age of the worker concerned. The BLA lists 31 forms of employment for which workers are covered, e.g. employed in various kinds of construction, employed as a driver, in railways, in the manufacturing process, etc. Government employees, university teachers and firms with less than 10 workers are excluded.

Following important accidents at the workplace, Bangladesh introduced additional compensation in this legislation in 2013. Employers with establishments of at least 100 workers must purchase group insurance to cover employment injuries.

In addition, according to the BLA, workers can benefit under certain conditions from two special funds, the Central Fund, and the Bangladesh Labour Welfare Foundation. The Central Fund concerns 100% export-oriented industry and is financed by a levy of 0.03 per cent on work orders. It supports workers registered as beneficiaries in case of permanent disability, loss of limb and death benefits, though this is not restricted to workplace accidents. The Labour Welfare Foundation has as its objective the improvement of the living conditions of workers, which is not restricted to workplace injuries. Large non-exporting companies should contribute 0.5 per cent of declared profits, while export-oriented employers are exempt. The impact on employment injury compensation of these funds is difficult to ascertain.

EXAMPLE: Under the current legislation, in case of death, the workers should receive between Tk 400,000 and Tk 500,000. Under Convention No. 121, the calculation depends on age and wage of the worker concerned and normally takes the form of a pension and not a lump sum. For example, if the widow/er is 30 years old and has two kids and the deceased workers' wage was equal to 8,000 BDT, the widow/er would be entitled to receive the equivalent of 3 times the current compensation when calculated based on principle under the Convention.

2.2 Challenges Regarding the Present-day Employment Injury Framework

The current employment injury compensation framework in Bangladesh poses various challenges.

- EII System is yet to be fully operationalized, and capacity of institution needs to be developed.
- Multiple entry points which could affect effectiveness of the system as a whole.
- Absence of connection with prevention measures.
- Lack of relevant data allowing to assess the real costs of employment injury protection.
- Inability to address large-scale industrial catastrophe.
- Workers in firms with less than 10 employees or employed in occupations outside the 31 listed occupations are not covered under the BLA. They rely on the general provisions of BLA.
- The compensation amounts provided by the law are relatively small and do not meet the ILO standards.
- The compensation amounts take the form of lump sum which does not generally guarantee the income replacement purpose for the duration of the contingencies.
- Under coverage, vocational rehabilitation is not explicitly mentioned and generally not covered.
- Regarding funding, small employers and employers in riskier industries like agriculture, transport and shipbreaking may well have difficulty to pay for the employers' liability or acquire insurance at a reasonable cost.

For an employment injury compensation system to work efficiently, it is essential to have various data available. This includes the records of workers, occurrence of injuries and their nature, and the number of fatalities. It is also necessary to know which medical treatments are available, and their cost. In Bangladesh this information is currently not available on a systematic basis. If an EII scheme is in place, the collection of such data is intrinsic to the operations of the executing agency. A better insight in injuries and occupational diseases, and their causes, may also result in better targeted occupational safety and health strategies, and hence improved safety overall. Protection and prevention are the two sides of the same token.

Another challenge occurs when major disruptions happen, due amongst others to major industrial accidents or pandemic like the recent COVID-19 outbreak. In such case, the current compensation scheme would be unable to absorb the claims and employers could be put in very difficult financial situation which could lead to them running out of business. If an EIS scheme is in place, such situations are covered. The EII implementing agency would be ready to commence financing medical treatment immediately and funds would have been available to start payments to injured workers and their families in case of death.

A new challenge is posed by the COVID-19 pandemic. In the context of EII the question is if COVID-19, when contracted in relation to the workplace, is considered an occupational injury. Recent State practice shows that if COVID-19 is contracted through occupational exposure, it could be considered an occupational injury that entitles infected workers or their dependants to compensation. With good preventive measures, the incidence of such occupational injury will diminish, and the costs of the recovery measures will follow accordingly. However, even with the best prevention measures in place, there is no zero-risk scenario. Any prevention policy should also be linked to a compensation policy to cover the situation where workers contract COVID-19 at work, need health care, lose their income temporarily or even permanently, or die as a result of infection.

2.3 Linkages Between EII and Trade

Bangladesh, as a least developed country (LDC), qualifies for the 'Everything but Arms (EBA)' program of the European Union (EU), which provides duty-free access to the EU market, Bangladesh's main export destination. It is expected however that in 2024 Bangladesh, given its sustained economic growth, will graduate from Least Developed Countries (LDC) status. This would mean that it no longer qualifies for the EBA programme. Instead, it can apply for the Generalized System of Preferences (GSP+). This programme ensures a smooth transition after graduation from LDC status, if it commits

to strong sustainability standards, retaining generous tariff preferences in accessing the EU market. Though the fundamental Conventions on labour rights the country has to adhere to for GSP+ do not include ILO Conventions Nos. 102 and 121, concrete action on employment injury protection and the fundamental right to a safe and healthy working environment, would be positive steps to ensuring an environment that is more conducive to compliance with international labour standards. This would help businesses in Bangladesh to become attractive suppliers in the international market.

Another linkage with trade concerns Bangladesh's exports, in particular of ready-made garments, as consumers in Western countries tend to become more critical about social and environmental conditions in the supply chains. Questions asked include use of child labour, factory safety, freedom of association, adequacy of wages, and if the brands' websites depict a truthful picture of labour conditions. Improvements in employment injury protection (and prevention), as envisioned in the Pilot on EII in the ready-made garment sector, will further improve Bangladesh's image, building on the improvements in factories' safety and the plans set out in the Ministry of Labour and Employment's Roadmap in the Labour Sector of Bangladesh (2021-2026). These issues are further accentuated given legislative developments in major importing countries where due diligence issues may well be included in compulsory law and cover both the prevention and protection against work-related injuries, e.g. the EU proposal for a Directive on Corporate Sustainability Due Diligence.

2.4 Opportunities and Justification for Introducing EII in Bangladesh

There is a clear window of opportunity for Bangladesh to move towards the gradual introduction to a nationally financed employment injury scheme at an affordable cost for employers. The start of the pilot for introducing an employment injury protection scheme in the ready-made garment sector will provide the necessary information, experience and lessons-learned and will build the administrative and institutional framework, the practice of which could be extended to other sectors of the economy. The continued economic growth, resulting in middle-income status in a few years' time, will increase opportunities to gradually introduce social insurance in line with the National Social Security Strategy (NSSS) and its second phase of Action Plan (2021-2025).

Distinct advantages of a mandatory Employment Injury Scheme include:

► For workers:

- it means a reliable system of compensation in cases of injury or occupational disease.
- it also means a barrier protecting them and their families against endemic poverty
- with supporting measures it can lead to better delivery of occupational medical services

► For Employers:

- it ensures affordability of contributions by collective sharing of risk.
- it can contribute to keeping the businesses open.
- as a risk-sharing scheme financed by the employers, these employers are free from individual compensation responsibilities
- it protects employers against the financial consequences of catastrophic accidents.
- it can enhance the enterprise's image and have positive legal, financial and reputational effects.

► For the State:

- it will ease the court system
- it can play a pivotal role in enhancing prevention of occupational injury
- it contributes to peaceful industrial relations
- it is a safe space to practice social dialogue
- it brings a better image to country – leading to access better trade agreements

In summary, introduction of EII safeguards decent conditions for the workers and their families, benefits employers and thus makes good economic and social sense.

► 3. Examples from Other Countries

3.1 Development of EII in Malaysia, Nepal, and Thailand

Experiences with EII in neighbouring countries can help Bangladesh in deciding on the appropriateness of changing from an employer's liability to a social insurance scheme on EII and apply lessons-learned in doing so. Almost all the countries in South and Southeast Asia have adhered to social insurance schemes for work-related injuries. Except for Nepal, Pakistan and India where employment injury protection is integrated with other branches of social protection, the costs of schemes vary from 1% to 2 % of the total wage bill. Only Sri Lanka continues to have a employers' liability regime, but it is accompanied with universal health care. In countries that have put into place social security schemes, the replacement rates for permanent disability and death are all above what the international standards require and take the form of pensions.

The practice of three countries is examined below. Out of these, Malaysia especially has introduced a system that is considered worthy of emulation given its coverage, sustainability and the additional services offered.

3.2 Malaysia

EII in Malaysia goes back to 1952 with the introduction of employers' liability scheme. In 1969 this changed to a social insurance scheme with the passing of the Workers Social Security Act. This meant adoption of the principle of joint responsibility by pooling of resources and risk sharing. Benefits include medical expenses, wage compensation in case of temporary or permanent disablement and physical and vocational rehabilitation, as well as funeral and survivors' benefits. The Act includes a list of occupational diseases. This list considers SARS and other forms of coronavirus as an occupational disease, hence also COVID infection qualifies as such. Commuting accidents, relating to work, are also included. Initially foreign and domestic workers, Government employees and the self-employed were excluded. The scheme is paid for by contributions by employers at 1.25 per cent of wages. In 2017 EII was gradually introduced for the self-employed, but this is so far undersubscribed. In 2019 EII was extended to foreign workers in possession of a passport and employment pass, with the obligation of employers to also register these workers.

The Act also created an Invalidity Pension (IP) Scheme that provides compensation against invalidity or death due to any cause and is financed by contributions from both employers and workers at 0.5% of wages each.

The institution responsible for the implementation of the EII and IP schemes, the Social Security Organization has also carried out various programs to promote safe workplaces and healthy lifestyles, besides physical rehabilitation and vocational training programmes in case of need for re-employment. For dependent children of deceased persons SOCSO can make education loans available.

3.3 Thailand

In Thailand, a broad system of social security was introduced in 1990 with the setting up of the Social Security Fund. It covered non-work-related contingencies, including sickness and maternity and since 2004 unemployment insurance.

Coverage for employment injuries and sickness was introduced as early as 1974 with the establishment of the Workmen's Compensation Fund. In 1994 the Workmen's Compensation Act was passed. The Act stipulated that formal sector employers are responsible to provide compensation for injury, disease, disability or death as a result of employment. However, if employers have registered their employees and pay their contribution to the Workmen's Compensation Fund, the Fund shall bear the compensation costs. Since 2002 this applies to enterprises with one or more employees.

The Workmen's Compensation Fund is financed by employers who contribute based on risk in their industrial classification, ranging from 0.2 to 1.0% of wages. After four years the rate is replaced by the so-called experience rate, reflecting actual experience of contingencies, which provides a stimulus to safety in the workplace. The Occupational Injury Rate has been steadily declining, from 21.7% in 2008 to 8.8% in 2017 (injury rate per 1000 workers).

The Fund provides the following benefits: medical compensation, temporary disability, permanent partial disability and permanent total disability, survivors' benefit, and funeral grant. This coverage also applies to undocumented migrant workers regardless of their nationality and legal status.

In 2018, changes were introduced in the Workmen's Compensation Act. Benefits were increased including an increase in indemnification from 60% to 70% of the employee's wage for permanent disability and death. Also, the number of beneficiaries increased as state employees and employees from state enterprises are also covered.

With regards to Covid, early on in the pandemic guidelines were issued by the Social Security Office that employees could claim compensation if Covid was contracted at work. Every case will be investigated, which is considered challenging, and the results will be presented to a subcommittee. If confirmed the employee can get compensation according to the existing rules and regulations.

The ILO is currently working with the Thailand Social Security Office to build up actuarial and research capacities. This includes an actuarial valuation of the Workers Compensation Fund which will give an indication of the Fund's sustainability.

3.4 Nepal

In 2017, Nepal adopted the contribution-based Social Security Act that established a mandatory social insurance programme for all workers to be implemented in stages. In 2019, four schemes were launched by the Social Security Fund for workers in the formal sector:

- Medical Care, Health, and Maternity Protection Scheme;
- Dependent Family Protection Scheme;
- Accident and Disability Protection Scheme; and
- Old Age Protection Scheme;

Both employers and employees must contribute respectively 20% and 11% of the basic salary. The Accident and Disability Protection Scheme replaced the employer liability system. Of the total 31 percent contribution rate, the accident and disability protection scheme constitutes 1.4 percent and the dependent family protection scheme - 0.27 percent. The benefits under the accident and disability scheme include full treatment cost of work injury and/or occupational disease, a benefit of 60 percent of basic salary until return to work in the case of temporary full disability and a lifetime monthly income of 60 percent of basic salary in the case of full permanent disability (benefit reduced as appropriate for partial disability). The dependent family protection scheme provides for a pension on death of the contributor at 60% of the basic salary, and an educational benefit to the children. The programme is managed by the Social Security Fund where in 2018 operational directives and an ICT system were adopted so that employees and employers can be registered in an efficient way, contributions can be collected, and benefits distributed. The Contribution-based Social Security Act, 2017 was drafted by a tripartite taskforce after extensive consultations among Government, employers and workers organizations.

Registration of both employers and employees is slow, for a part caused by the economic effects of the COVID-19 pandemic, though there is also an ongoing discussion regarding the need for the scheme's restructuring.

3.5 Lessons-learned

The examples of Malaysia, Nepal and Thailand show that:

- It is essential to have a strong legal framework which is straightforward, enforceable and in accordance with the relevant ILO Conventions;

- A one-stop-shop is the most effective manner to ensure prompt access to in-cash and in-kind benefits;
- The employment injury scheme can be modest at the time of introduction with coverage expanded over time, according to the country's characteristics and economic conditions;
- Employment injury scheme can play a positive role in improving occupational safety and health.
- Employment injury schemes are affordable for employers
- Employment injury schemes of the region offer replacement rate consistently higher than what the international Conventions require.

► 4. Opportunity and Recommendations

Bangladesh is in a good position to progress with social security: with the National Social Security Strategy the government has set out an ambitious policy agenda, and Prime Minister has said that the government is going to introduce a long-term and sustainable employment injury scheme. Bangladesh is experiencing a period of sustained economic growth, an EIS Pilot in the ready-made garment sector has just been launched. A step-by-step expansion to other sectors of the economy is achievable. This has distinct advantages, for workers and employers alike as set out earlier in this policy brief.

An approach can be envisaged whereby progress in the EIS Pilot for the ready-made garment (RMG) sector determines the expansion to other sectors. This would entail annual monitoring of the progress in the RMG EIS Pilot. If certain conditions are met, e.g., the implementing agency is fully functional and can absorb additional numbers, the system can be expanded. Before this happens, the relevant ministries would liaise with sector representatives, the employers' federation and trade unions to prepare for the systems change to a risk-sharing insurance system. These sectors would all be from the formal sector such as pharmaceuticals, electronics, shipbuilding, food. It is too early to consider social insurance schemes in the informal sector, given its sheer size and the low level of organization. An EII scheme for the formal sector would cover some 9 million workers, about 15% of the total labour force of 60 million.

It is recommended that Bangladesh:

- Commence implementation of the pilot in the RMG sector without delay
- Monitor the EII pilot with the view of expanding its practices to other sectors of activities
- Explore to what extent ratification of ILO Conventions No. 121 and/or No. 102 (Part VI) accompanied with technical assistance from its Office, could support the country in its efforts to extend to all workers in Bangladesh a fully effective protection against work-related injury
- Start discussions between representatives of relevant government departments and employers' and workers' organisations to prepare for changing to an EII system
- Develop policies to determine in which cases victims of COVID-19 could be eligible for compensation, both under the present rules and regulations and under an EII scheme.
- Revise list of occupational diseases in line with ILO Recommendation 194.

The ILO stands ready to support the national social dialogue on all these issues.

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