# THE SYSTEMATIC MISCLASSIFICATION OF WORKERS AS MANAGERIAL EMPLOYEES UNDER BANGLADESH LABOUR LAW AND LESSONS FROM SINGAPORE

**SAQUIB RAHMAN & RAGIB SHAHRIAR***

**ABSTRACT**

*The Bangladesh Labour Act 2006 establishes a foundational binary: employees classified as "workers" attract the full suite of statutory protections, while those categorized as "managerial employees" do not. This definitional divide, though doctrinally defensible, has become a vector for systematic exploitation. Organizations across Bangladesh, spanning the private sector, state-linked enterprises, and commercial banks, routinely assign inflated designations to otherwise ordinary employees, thereby avoiding liability under the Act and depriving employees of fundamental entitlements including overtime pay, termination benefits, and access to labour courts. The judiciary has consistently emphasized that substance must prevail over title, holding that the nature and scope of actual functions determine an employee's legal status. However, in the absence of a structured statutory framework, judicial responses remain reactive and case-specific, offering limited systemic protection. This article examines the legal framework, patterns of misclassification, and judicial responses in Bangladesh, and compares them with the approach adopted under Singapore's Employment Act. It proposes doctrinal reforms and clearer ex ante guidance to reduce abuse and enhance legal certainty.*

*Keywords: Labour Law, Workers, Managerial Employees, Bangladesh, Singapore, Misclassification.*

## I. INTRODUCTION

The relationship between law and labour in Bangladesh is not merely a technical or administrative matter; it is a question of power. Bangladesh's workforce, numbering over seventy million, is concentrated in sectors ranging from ready-made garments and textiles to banking,

https://doi.org/10.47126/nsulr.v1i1.05

telecommunications, and private educational institutions.[1] The formal labour market is regulated principally by the *Bangladesh Labour Act 2006*, which consolidated earlier fragmented labour legislation into a single legal code and reflects Bangladesh's engagement with ILO-based labour standards.[2] The Act, and its subsequent refinement through the *Bangladesh Labour Rules 2015*, represents the most ambitious attempt yet to codify the rights of workers and impose binding obligations on employing organizations.[3]

Yet the protective architecture of the Act contains a structural fault. The statutory definition of 'worker' in section 2(65) of the Act encompasses a broad range of employees, including those who are skilled, unskilled, manual, clerical, and technical, but explicitly excludes those employed 'mainly in a managerial or administrative capacity.'[4] This exclusion, reasonable in principle, has in practice become a tool of evasion. Organizations operating within Bangladesh's deeply asymmetric labour market,[5] where unemployment pressure depresses bargaining power and awareness of statutory rights is low, have discovered that by assigning managerial-sounding designations to employees, they can shield themselves from the Act's entire regime of protections.[6] Employees so designated find themselves unable to access labour courts, unable to claim overtime, unable to invoke termination protections, and unable to enforce the maternity, health, and safety provisions that Parliament intended to be universal among covered workers.[7]

This phenomenon, the deliberate or opportunistic misclassification of workers as managerial employees, is the central subject of this article. It is not a marginal practice. As the volume of reported cases before Bangladesh's Labour Courts and appellate bodies demonstrates,

---

* Saquib Rahman is a Senior Lecturer in the Department of Law at North South University, and Ragib Shahriar is a Fourth-year LL.B. student in the same department.

[1] Kohinur Aktar, Touhidul Islam, Md Minhaz Uddin, and Omar Faruk, 'Decent Work and inclusive economic growth: Bangladesh perspective' (2020) 11(16) *Journal of Economics and Sustainable Development* 11; International Labour Organization, *Bangladesh Employment and Environmental Sustainability Factsheet* (November 2022) 2.

[2] Hassan Faruk Al Imran, 'Definition of Workers and Application of the Bangladesh Labour Act 2006: An Appraisal' (2020) 9(1) *E-Journal of International and Comparative Labour Studies* 34; Muhammod Shaheen Chowdhury, 'Compliance with Core International Labor Standards in National Jurisdiction: Evidence from Bangladesh' (2017) 68(1) *Labor Law Journal* 78, 80.

[3] Al Imran, above note 2, 34–37; Fatemaa Waariithah Ahsan and Priya Ahsan Chowdhury, 'Modern Day Slavery in the Tea Gardens of Bangladesh: Abolished in Law, Persisting in Fact' (2021) 2(1) *Journal of International Law and Comity* 5.

[4] *Bangladesh Labour Act 2006*, s 2(65).

[5] Duncan Campbell and Ishraq Ahmed, 'The labour market in developing countries', in *Perspectives on labour economics for development* (ILO, 2013).

[6] Al Imran, above note 2, 45–46.

[7] *Bangladesh Labour Act 2006*, ss 26, 46, 51–78, 108, 213.

https://doi.org/10.47126/nsulr.v1i1.05 

misclassification has become a recurring feature of employment disputes across industries. The Supreme Court of Bangladesh has, over several decades, developed a body of doctrine rooted in the principle of 'substance over title': that the actual nature of an employee's functions, not their designation, must determine their legal status. This doctrine is sound, but its ad hoc application through individual cases has not produced the systematic clarity that the labour market requires.

The central argument of this article is as follows. The definitional ambiguity in Bangladesh's Labour Act, though partially ameliorated by judicial doctrine and Rule 2(1) (Nio) of the Labour Rules 2015, remains insufficiently structured to deter misclassification or to provide consistent guidance to adjudicators.[8] What is required is a multi-factor statutory framework one that incorporates functional criteria, decision-making authority thresholds, educational and credentialing standards, and, as an anchoring mechanism, a salary threshold to replace the present open-ended judicial inquiry with a predictable, legislatively defined test. In developing this framework, the experience of Singapore, whose Employment Act employs a salary-based threshold combined with functional tests for the exclusion of managerial and executive employees from Part IV protections, offers instructive and practically proven comparative guidance.[9]

The article proceeds as follows. Part II traces the historical evolution of labour legislation in Bangladesh from its colonial origins through the landmark consolidation of 2006, examining the political and economic forces that shaped the current statutory framework. Part III analyses how the Act operates, in particular, the relationship between the Act and employers' internal service rules, and the categories of organizations and employees that fall outside the Act's reach. Part IV examines the phenomenon of misclassification, drawing on the statutory provisions and the policy incentives that drive the practice. Part V provides a structured doctrinal analysis of the judicial response, grouping the decided cases by the legal principles they establish and subjecting the resulting doctrinal body to critical scrutiny. Part VI conducts a comparative analysis of Singapore's

[8] *Md Mehdi Hassan and Another v Government of Bangladesh and Others* (2012) 1 LCLR (HCD) 380, 488, also reported in (2014) 19 BLC (HCD) 472; *Bangladesh Labour Rules 2015*, r 2(1)(Nio); *Karnaphuli Paper Mills Workers Union v Karnaphuli Paper Mills Ltd and Others* (2002) 22 BLD (AD) 33; *Bangladesh Parjatan Corporation v Ali Hossain and Others* (2014) 34 BLD (AD) 135; Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), *Study on the Role of Supervisors in RMG Sector of Bangladesh: Insights, Challenges and Strategies for Effective Women Leadership in Garment Factories* (GIZ, 2024) 12, 17.

[9] Ministry of Manpower, Singapore, *Employment Act: Who It Covers* <[https://www.mom.gov.sg/employment-practices/employment-act/who-is-covered]> accessed 9 July 2026; *Hasan Shofiqul v China Civil (Singapore) Pte Ltd* [2018] SGHC 128, [70]–[73] <[https://www.elitigation.sg/gd/s/2018_SGHC_128]> accessed 9 July 2026.

framework, culminating in an explicit comparison of the two jurisdictions' approaches. Part VII proposes concrete legislative, regulatory, and judicial reforms.

## II. BRIEF HISTORY OF LABOUR LAW IN BANGLADESH

### A. Colonial Foundations

The trajectory of labour law in Bangladesh is inseparable from the trajectory of the subcontinent's colonial history.[10] The first piece of labour legislation in what is now Bangladesh then the eastern district of British India arrived in the form of the *Factories Act 1881*,[11] which sought to regulate the hours and conditions of factory employment in response to the industrial expansion of the late Victorian era.[12] The 1881 Act was followed by a sequence of statutes that collectively constituted the labour law landscape inherited at independence: the *Workmen's Compensation Act 1923*,[13] the *Trade Unions Act 1926*,[14] the *Trade Disputes Act 1929*,[15] the *Payment of Wages Act 1936*,[16] *the Employment of Children Act 1938*,[17] and the *Maternity Benefit Act 1939*.[18] Each of these enactments addressed a discrete dimension of the employment relationship, but they did not form a coherent or integrated system.[19] They were, in the main, reactive measures legislative responses to specific abuses or specific categories of vulnerable workers, shaped by the priorities of colonial administration rather than a sustained philosophy of labour rights.[20]

The definitional question at the heart of this article who is a 'worker' for the purposes of labour law was present even in these early enactments, though it arose in a more straightforward industrial context. The colonial statutes were primarily concerned with factory workers engaged in manual

---

[10] Maisha Tabassum Anima, 'Legacy of Colonialism: Colonized laws which holds back for Reformation and Liberal Criminological Perspective in Bangladesh' (1st Decolonization and Justice Conference at University of Regina, 2022).
[11] Factories Act 1881 (Act XV of 1881).
[12] Avkash Daulatrao Jadhav, 'The Role of British Legislations and the Working Class Movement in Bombay: A Historical Study of the Factory Acts of 1881 and 1891 in India' (2019) 1 *International Social Sciences Review* 1.
[13] Workmen's Compensation Act 1923 (Act VIII of 1923).
[14] Trade Unions Act 1926 (Act XVI of 1926).
[15] Trade Disputes Act 1929 (Act VII of 1929).
[16] Payment of Wages Act 1936 (Act IV of 1936).
[17] Employment of Children Act 1938 (Act XXVI of 1938).
[18] Maternity Benefit Act, 1939 (Bengal Act No. 4 of 1939).
[19] Adwitiya Mishra and Aasheerwad Dwivedi, 'Labour laws in India: history, evolution and critical analysis' (2024) 65(5) *Labor History* 678.
[20] Kerry Rittich, 'Historicising labour in development: Labour market formalisation through the lens of British colonial administration' (2019) 29 *Labor History* 1.

production.[21] The distinction between manual labourers and managerial staff was relatively intuitive: the factory floor and the manager's office were physically and socially distinct. As the economy diversified and clerical, technical, and supervisory roles proliferated, the simplicity of this binary began to break down.[22]

### B. The East Pakistan Period and Early Post-Independence Framework

Following the partition of 1947 and the creation of Pakistan, the legislature of East Pakistan inherited and continued to apply the colonial statutes. The most significant development of this period for present purposes was the *Employment of Labour (Standing Orders) Act of 1965*,[23] a statute that required industrial establishments to define the conditions of employment for their workers and that drew an explicit distinction between 'workers' and managerial employees.[24] It was under this Act that the early cases establishing the substance-over-title doctrine were decided, including the foundational judgment of *General Manager, Jamuna Oil Company Ltd v Golap Rahman*.[25] The 1965 Act also gave rise to the *Industrial Relations Ordinance 1969*,[26] which regulated collective bargaining and trade union activities and similarly excluded managerial employees from its protective ambit.[27]

The independence of Bangladesh in 1971 brought with it both a new state and an inherited corpus of labour legislation. The new government was not immediately positioned to undertake comprehensive labour law reform: the priority of the 1970s was reconstruction and economic stabilization.[28] Throughout the 1970s and 1980s, Bangladesh continued to operate the pre-independence framework with periodic amendments and gazetteer notifications. This period generated a significant volume of case law under the 1965 Act, as courts were repeatedly confronted with the question of whether individual employees fell within or outside the definition

---

[21] Valerian DeSousa, 'Modernizing the colonial labor subject in India' (2010) 12(2) *CLCWeb: Comparative Literature and Culture* 1.

[22] Arup Kumar Sen, 'Mode of labour control in colonial India' (2002) *Economic and Political Weekly* 3956.

[23] *Employment of Labour (Standing Orders) Act 1965* (Act VIII of 1965).

[24] Ibid, ss 1, 2(v), 3.

[25] General Manager, *Jamuna Oil Company Ltd v Golap Rahman & Another* (1982) 34 DLR (AD) 166

[26] *Industrial Relations Ordinance 1969* (Ord. XXIII of 1969).

[27] Ibid, ss 2(xxviii), 3–4.

[28] Yasmin Saikia, *Women, war, and the making of Bangladesh: Remembering 1971* (Duke University Press, 2011).

https://doi.org/10.47126/nsulr.v1i1.05

of 'worker' a question that the legislation left, with uncomfortable openness, to judicial determination.

### C. The Road to Consolidation: The 2006 Labour Act

The inadequacy of the fragmented colonial-era statute book became increasingly apparent as Bangladesh's economy industrialized through the 1980s and 1990s.[29] The explosive growth of the ready-made garments sector from the mid-1980s onward created a vast new workforce, predominantly female, employed in conditions that existing legislation was ill-equipped to regulate effectively.[30] International trading partners and buyers, motivated in part by reputational concerns and in part by genuine human rights considerations, began to exert pressure on Bangladesh to reform its labour standards.[31] The ILO, through its technical assistance programmes, similarly encouraged consolidation and modernization.[32]

These pressures, combined with growing domestic awareness of labour rights inadequacies, produced the *Bangladesh Labour Act 2006*.[33] The Act is a landmark statute. It consolidated twenty-five previously separate enactments, including the 1965 Act and the 1969 Ordinance, into a single comprehensive code. It addressed conditions of service and employment, maternity benefits, occupational health and safety, working hours, leave entitlements, and critically for this article the definition of 'worker' and the scope of labour court jurisdiction. The Act also aligned Bangladesh's labour framework with ILO core conventions, including the principles of freedom of association, prohibition of forced labour, and equal remuneration.[34]

Yet even in the 2006 consolidation, the definitional question was not conclusively resolved. The Act's definition of 'worker' in section 2(65) retained the managerial exclusion in essentially

---

[29] Sultan Hafeez Rahman, 'Trade and industrialization in Bangladesh: An assessment', in *Trade policy and industrialization in turbulent times* (Routledge, 2002) 277.
[30] Kazi Mahmudur Rahman and Ehsanul Huda Chowdhury, 'Growth trajectory and developmental impact of ready-made garments industry in Bangladesh', in *Bangladesh's economic and social Progress: From a basket case to a development model* (Springer, 2020) 267.
[31] Naila Kabeer, 'The evolving politics of labor standards in Bangladesh: Taking stock and looking forward', in *Labor, global supply chains, and the garment industry in South Asia* (Routledge, 2019) 231.
[32] Md Hasnath Kabir Fahim, 'A pragmatic analysis of labor standards in Compliance with ILO and Islam: Bangladesh Perspective' (2020) 11 *Beijing L Rev* 544.
[33] Samina Afrin, 'Labour condition in the apparel industry of Bangladesh: Is Bangladesh labour law 2006 enough?' (2014) 4(11) *Development Country Studies*.
[34] Robayet Ferdous Syed, 'Labor standards, labor policy, and compliance mechanism: a case study in Bangladesh' (2024) 65(2) *Labor History* 256.

the same terms as the predecessor legislation. The legislature did not define 'managerial' or 'administrative' with any precision, and did not establish objective criteria for the distinction. The result was that the doctrinal problem that had generated decades of litigation under the 1965 Act was carried forward, substantially unchanged, into the new statutory framework. The *Bangladesh Labour Rules 2015*, enacted under the Act's rule-making power, provided some modest elaboration particularly through Rule 2(1) (Nio), which is examined in detail in Part V but fell short of providing a comprehensive or operationally clear framework.

## III. UNDERSTANDING HOW THE LABOUR LAW WORKS

### A. The Scope of the Act and Excluded Organizations

The *Bangladesh Labour Act 2006* does not apply universally to all employment relationships in Bangladesh.[35] Section 2 of the Act identifies categories of organizations that fall outside its regulatory reach. The most significant exclusions concern government offices and entities under government control (with narrowly defined exceptions), non-profit hospitals and clinics, and educational, research, and training institutions. The rationale for these exclusions' rests partly on the existence of alternative regulatory regimes government servants are governed by separate service codes, for example and partly on a legislative judgement that the conditions and purposes of these organizations are sufficiently distinct from commercial employment to warrant separate treatment.

These exclusions, however, generate significant anomalies in practice. Consider the case of a teacher employed at a private elementary school. She is not governed by the Labour Act; she is instead subject to the school's internal service regulations.[36] If those regulations provide for three months of maternity leave while the Labour Act mandates four months for covered workers, she receives a materially inferior entitlement and has no statutory recourse. The government's gazette notification of six months' maternity leave for female public servants represents a further departure in this case more generous illustrating how the absence of a unified framework produces a

[35] Chowdhury, above note 2, 78–80.

[36] Saquib Rahman, *Outside the Scope of Labour Law*, 1 April 2019 <[https://www.thedailystar.net/law-our-rights/law-analysis/news/outside-the-scope-labour-law-1723651]> accessed 9 July 2026; *Bangladesh Labour Act 2006*, ss 1(4)(g), 3.

patchwork of protections that correlates with neither the vulnerability of workers nor the public interest in their welfare.

### B. The Relationship Between the Act and Internal Service Rules

For organizations that do fall within the Act's scope, the relationship between the Act and the organization's internal service rules is governed by a principle of minimum standards. Section 3(1) of the Act provides that an organization may formulate its own service rules governing the appointment and conditions of service of its employees, but such rules cannot be less favourable to employees than the provisions of the Act itself. The Act is thus a floor, not a ceiling: organizations are free to provide more generous terms and multinational corporations operating in Bangladesh frequently do so but they cannot contract below the statutory minimum.

The practical consequence of this principle is considerable. In Bangladesh's labour market, which has historically been characterized by an employer-side structural advantage arising from high unemployment and limited worker bargaining power, the temptation for organizations to treat the Act's minima as the *de facto* maximum is strong.[37] Local enterprises, in particular, tend to draft service regulations that closely track the statutory minima without meaningful enhancement. The more significant problem, however, is not organizations that fall below the minimum but organizations that seek to remove employees from the Act's coverage entirely through misclassification as managerial employees thereby rendering the floor irrelevant to those employees' situations.

### C. Contractual and Non-Standard Employment

The Act's definition of 'permanent worker' is anchored in full-time employment: individuals engaged on a continuing basis without a fixed termination date.[38] But an increasing proportion of Bangladesh's workforce, including employees of private universities and non-governmental organizations, are employed on renewable fixed-term contracts that must be re-executed

[37] Masoud Ahmad, 'Labor and Wages in Bangladesh: Trends, Challenges, and Policy Implications' (2023) 12(3) *International Research Journal of Social Sciences* 66.
[38] David Biggs and Stephen Swailes, 'Relations, commitment and satisfaction in agency workers and permanent workers' (2006) 28(2) *Employee Relations* 130.

https://doi.org/10.47126/nsulr.v1i1.05 

periodically.[39] Such employees fall into a regulatory grey area: they may be covered by the Act in respect of some provisions but enjoy diminished security of tenure compared to permanent workers. This structural vulnerability is compounded by the internal governance arrangements typical of such institutions, in which appeals against disciplinary decisions are addressed to the same hierarchy that imposed the original decision a system that provides the form of procedural fairness without its substance.

## IV. THE PRACTICE OF PASSING OFF IN BANGLADESH

### A. The Statutory Architecture of the Worker/Manager Divide

The foundational distinction in Bangladesh labour law is established by sections 2(65) and 2(49) of the Labour Act 2006. Section 2(65) defines 'worker' to include any person employed in any establishment or industry for hire or reward, whether the terms of employment be express or implied, to do any skilled, unskilled, manual, technical, trade promotional, or clerical work. The definition is intentionally broad: it is designed to capture the full range of productive labour in the modern economy, extending beyond the factory floor to encompass clerical and technical workers.[40] Critically, however, the definition concludes with an express exclusion: persons employed primarily in a managerial or administrative capacity are not 'workers' within the meaning of the Act.

Section 2(49) defines 'employer' in correspondingly broad terms. The combined effect of the definitional provisions is to create a binary framework: the Act regulates the employment relationship between employers and workers; where the employee is a managerial or administrative employee, the Act does not apply (or applies only partially), and the employment relationship is governed by contract and the organization's internal rules.

The term 'mainly' or 'primarily,' in some translations is the operative word in the exclusion clause. The legislature's use of this qualifier is significant: it contemplates that an employee may perform some managerial functions without thereby losing their status as a worker. Only where managerial or administrative work constitutes the dominant character of the employment is the

[39] Kazi Raihan Uddin and Muhaiminul Islam, 'Job Insecurity and Affective Commitment Dilemma in Private Higher Educational Institutions in Bangladesh: How Organizational Support Matters During COVID-19' (2021) 42(2) *Dhaka University Journal of Business Studies*

[40] *Bangladesh Labour Act 2006*, s 2(65); Al Imran, above note 2, 34–37.

exclusion triggered. In practice, however, this qualifier has not prevented the misclassification problem, because organizations have learned that assigning a managerial designation, without more, has often been treated as presumptive evidence of managerial employment evidence that the employee must then affirmatively rebut.

### B. Motivations for Misclassification

The incentive structure driving misclassification is straightforward, and it operates across multiple dimensions. First, and most immediately, managerial employees are not entitled to the working hour limitations and overtime pay provisions of the Act. In industries where long working hours are the norm construction, banking, retail, and information technology, among others the financial saving from excluding a significant portion of the workforce from overtime entitlements can be substantial.[41] A single misclassified employee who works forty hours of overtime per month represents a recurring saving of potentially several times the legal overtime rate, multiplied across dozens or hundreds of similarly situated employees.

Second, managerial employees are not entitled to the termination protections that the Act confers on workers. The Act's provisions governing termination, retrenchment, and notice which require employers to follow prescribed procedures and pay specified benefits do not apply to employees excluded from the definition of worker. By classifying an employee as managerial, an organization renders itself free to terminate that employee on whatever contractual terms it has imposed, without reference to the Act's procedural safeguards. In an environment where the Labour Court system provides an accessible forum for worker complaints, the ability to sidestep that forum through misclassification is operationally valuable to employers.

Third, and structurally most important, misclassification denies the employee access to the Labour Court as a forum for their disputes. The Labour Court is a specialized tribunal with summary jurisdiction over disputes arising under the Act. It provides a faster and, in principle, more accessible avenue for redress than the civil courts. Where an employee is classified as managerial, their only recourse lies in the civil courts through a contractual claim a route that is

[41] Md Mohiuddin, 'Labor Management Relations Following the Labor Laws of Ready Made Garments in Bangladesh: The Present Perspective' (2014) 16(3) *IOSR Journal of Business and Management* 32.

slower, more expensive, typically more procedurally complex, and more likely to be skewed by the terms of an employment contract drafted by the employer.[42]

Bangladesh's labour market context amplifies these incentives. The country's unemployment rate particularly among the educated urban workforce that is most likely to be the target of misclassification means that employees in formal sector jobs have limited practical alternatives. The power to terminate employment, or the implicit threat of termination, functions as a significant deterrent against employees asserting their rights.[43] Human resources departments in many organizations do not proactively inform employees of their statutory entitlements, and awareness of the legal significance of the worker/manager distinction is low.[44]

## V. PROTECTION FROM BANGLADESHI RULES AND THE COURT

The Bangladeshi judiciary has developed, over several decades, a body of doctrine addressing the misclassification of workers as managerial employees. The volume and consistency of this case law is striking: the courts have been confronted with the problem repeatedly, across a wide range of industries and employment relationships, and have responded with a remarkably stable doctrinal framework. Analysis of the decided cases reveals four principal legal principles, each of which merits individual examination before a critical synthesis is attempted.

### A. The Substance-Over-Title Principle

The most fundamental doctrine established by the Bangladeshi courts is the principle that the actual nature of an employee's functions, rather than their designated title, determines their legal status. This principle was articulated with clarity in *General Manager, Jamuna Oil Company Ltd v Golap Rahman & Another*, where the Supreme Court of Bangladesh (Appellate Division) upheld a finding that Golap Rahman, despite his designation as 'Chief Driver,' was a worker within the meaning of the *Employment of Labour (Standing Orders) Act 1965*. The court rejected the employer's contention that the 'Chief' designation signified a transition to managerial status,

[42] Ummey Tahura, 'Role of Clients, Lawyers, Judges, and Institutions in Hiking Litigation Costs in Bangladesh: An Empirical Study' (2022) 9(1) *Asian Journal of Law and Society* 59–62.
[43] Shoaib Ahmed, 'Wage Theft, Secrecy, and Derealization of 'Ideal Workers' in the Bangladesh Garment Industry' (2024) 45(6) *Organization Studies* 881–85.
[44] Mohammad Shahidul Islam and Md. Abdur Rakib, 'Labour Laws in the Garment Sector of Bangladesh: A Workers' View' (2019) 34(3) *Yuridika* 467.

holding that the actual responsibilities performed by Rahman which remained driving and vehicle operation were the appropriate basis for classification.[45]

The principle was reaffirmed with equal force in Senior Manager, *Dosta Textile Mills Ltd v Sudhansu Bikash Nath*, where the court found that an employee designated as ‘Store-in-Charge’ had been improperly classified as a managerial employee following his dismissal on allegations of misappropriation. The court observed that the timing of the reclassification which occurred after the misconduct allegation, seemingly to insulate the employer from the Act’s termination procedures was itself indicative of bad faith. The court held that the actual duties and functions of the Store-in-Charge were those of a worker, not a manager, and ruled that the employee retained the right to pursue statutory remedies.[46]

Similarly, in *M.R. Chowdhury v 1st Labour Court, Dhaka and Ors*, the Supreme Court focused explicitly on the nature of the work performed by an employee designated as ‘Chief Inspector.’ The court found that the employee’s actual responsibilities collecting demands from establishments and providing security personnel were clerical and operational in character, not managerial. The court reiterated that the designation of ‘managerial employee’ requires substantial proof of genuine managerial functions and authority.[47] This decision is particularly significant because it addresses the inflation of supervisory titles ‘Inspector,’ ‘Chief Inspector,’ and similar designations that has become a common vehicle for misclassification.[48]

The doctrinal unity of these decisions is clear: the Act’s definition of ‘worker’ is a functional definition, not a titular one. An organization cannot alter the legal character of an employment relationship by the simple expedient of a designation on a business card or an organizational chart. The court will look behind the title to the substance of what the employee actually does.[49] This principle is doctrinally sound and consistent with the purposive approach to statutory interpretation that Bangladesh’s courts have consistently applied in labour matters.

---

[45] *General Manager*, above note 25.
[46] *Senior Manager, Dosta Textile Mills Ltd v Sudhansu Bikash Nath* (1988) 40 DLR (AD) 45.
[47] *M R Chowdhury v 1st Labour Court, Dhaka and Others* (1997) 2 BLC (HCD) 366.
[48] Matthew W. Finkin, ‘The Supervisory Status of Professional Employees’ (1977) 45(4) *Fordham Law Review* 805.
[49] *Senior Manager*, above note 46; *M R Chowdhury*, above note 47.

### B. The Primary Function Test

The substance-over-title principle, while foundational, does not fully resolve the question of how to classify employees who perform a mixture of managerial and non-managerial functions. For such employees, the courts have developed what may be termed the primary function test: an employee is excluded from the worker definition only if their primary or dominant employment function is managerial or administrative. Incidental, occasional, or subordinate managerial duties are insufficient to trigger the exclusion.[50]

This test was explicitly articulated in *Indo Pakistan Corporation Ltd v First Labour Court of East Pakistan*, where the court considered an employee who occasionally took on managerial duties. The court held unequivocally that isolated instances of performing managerial functions did not change the employee's status as a worker. The statutory qualifier 'mainly' was interpreted as requiring that managerial work constitute the dominant and primary mode of the employee's employment not a secondary or exceptional element of an otherwise non-managerial role.

The primary function test received further development in *Karnaphuli Paper Mills Workers Union v Karnaphuli Paper Mills Ltd and Others*. The court was asked to determine the status of an employee holding a supervisory title within the paper mills. The employer argued that supervisory employees were categorically excluded from the worker definition. The court rejected this categorical approach, holding that a supervisory title does not in itself exclude an individual from worker classification unless it is demonstrated that the individual exercises managerial or administrative functions as their primary responsibility.[51] The court drew a distinction between supervisory work the direction and oversight of other employees' immediate work output and managerial work the exercise of discretionary authority over organizational decisions. The former, the court found, was not the same as the latter.

This distinction, though doctrinally important, has not always been consistently applied. The *Bangladesh Parjatan Corporation v Ali Hossain and Ors* case presents a more conservative approach: the court, citing the earlier Pakistani precedent of *Workers of Bata Shoe Co*, held that an Electrical Foreman's role which involved supervising and controlling the work of other employees was sufficiently supervisory in character to take him outside the worker definition,

[50] *Indo Pakistan Corporation Ltd v First Labour Court of East Pakistan* (1969) 21 DLR 285.
[51] *Karnaphuli Paper Mills Workers Union*, above note 8.

notwithstanding that he occasionally performed manual tasks himself. The court quoted approvingly the principle that occasional manual work by a supervisor does not make their role 'manual within the meaning of the definition.' This decision sits in some tension with the primary function test as applied in Karnaphuli: it suggests that a supervisory role can suffice for the managerial exclusion, whereas Karnaphuli requires something more.[52] The inconsistency points to a doctrinal gap that the existing case law has not resolved.

### C. The Requirement of Positive Evidence of Managerial Functions

A third principle that emerges from the decided cases is that the managerial character of an employment relationship cannot be presumed from a title or from the fact of employment in a particular sector: it must be positively established by evidence of the actual functions performed. This principle places the evidentiary burden firmly on the party seeking to invoke the managerial exclusion ordinarily the employer to demonstrate with concrete evidence that the employee's primary functions were genuinely managerial.[53]

In *Managing Director, Rupali Bank Limited v Md. Nazrul Islam Patwary*, the employer sought to characterize a security guard as a managerial employee in order to exclude him from the protections of the 1965 Act. The Supreme Court upheld the trial court's finding in the employee's favour, holding that the definition of 'worker' is inclusive of roles that extend beyond production-oriented positions and encompasses the security guard's role, and that the employer had failed to adduce concrete evidence of managerial functions. The court emphasized that organizations cannot evade their legal responsibilities by invoking managerial designations without substantiation.[54]

The requirement of positive evidence was similarly applied in *Managing Director, Contiforms Forms Limited and Peasant Trading Cold Storage (Pvt) Limited v Member, Labour Appellate Tribunal Dhaka and Others*. The court made clear that an employee's designation cannot be used to infer managerial or administrative duties: only concrete evidence of the actual responsibilities performed can support the managerial classification. This ruling is procedurally as well as substantively significant: it affects the allocation of the burden of proof in misclassification

---

[52] *Bangladesh Parjatan Corporation*, above note 8; *Karnaphuli Paper Mills Workers Union*, above note 8.
[53] International Labour Organization, *R198 — Employment Relationship Recommendation, 2006 (No 198)*, paras 9–11 <[https://webapps.ilo.org/static/english/inwork/cb-policy-guide/employmentrelationshiprecommendationno198.pdf]> accessed 9 July 2026.
[54] *Managing Director, Rupali Bank Limited v Md Nazrul Islam Patwary* (1996) 48 DLR (AD) 62.

disputes, placing the obligation of positive demonstration on the employer rather than requiring the employee to disprove a presumption of managerial status.[55]

The requirement of positive evidence has important implications for the structure of misclassification litigation. Where an employer introduces nothing more than the employment contract (which, in misclassification scenarios, will typically describe the employee as a manager) and the organizational chart, this evidence alone will be insufficient to satisfy the court. The employer must go further and demonstrate, through detailed evidence of how the employee's working time was actually spent and what decisions the employee was actually authorized to make, that the managerial character of the employment was genuine rather than nominal.

### D. The Jurisdictional Dimension of Misclassification

The fourth and perhaps most practically significant principle concerns the jurisdictional consequences of misclassification. Because the Labour Court's jurisdiction is limited to disputes under the Act, and because the Act's protections extend only to 'workers,' the misclassification of an employee as managerial has the effect of excluding them from the Labour Court entirely.[56] This was the central issue in *Managing Director, Rupali Bank v Tafazal Hossain*,[57] where the court examined the implications of classifying an Assistant Cashier as a managerial employee. The court found that such classification significantly limited Hossain's rights under the *Administrative Tribunals Act 1980*,[58] which conferred exclusive jurisdiction over certain employment disputes, and observed the ongoing tension between employee rights and organizational interests in this sphere.

The jurisdictional dimension means that misclassification disputes frequently arise not as direct claims for unpaid wages or benefits but as preliminary jurisdictional contests: the employer asserts that the Labour Court has no jurisdiction because the claimant is a managerial employee; the claimant disputes the designation; and the court must resolve this preliminary question before it can reach the substantive complaint. In *Pubali Bank Limited v The Chairman*, First Labour Court, the court clarified that job titles alone cannot determine whether an employee is a worker or a

---

[55] *Managing Director, Contiforms Forms Limited and Peasant Trading Cold Storage (Pvt) Limited v Member, Labour Appellate Tribunal Dhaka and Others* (1998) 50 DLR 476; ILO, *R198*, above note 53, paras 9, 11.
[56] *Bangladesh Labour Act 2006*, ss 2(65), 213.
[57] *Managing Director, Rupali Bank v Tafazal Hossain* (1992) 44 DLR(AD) 260
[58] *Administrative Tribunals Act 1980* (Bangladesh), s 4.

https://doi.org/10.47126/nsulr.v1i1.05 

managerial employee for jurisdictional purposes. The actual nature of the employee's responsibilities must be assessed.[59] This ruling, while consistent with the substance-over-title principle, means that the jurisdictional determination itself requires a substantive inquiry — one that may require evidence and argument before the court even reaches the question of whether there has been a wrong.

### E. The Judicial Framework in Mehdi Hassan and the 2015 Rules

The most structured articulation of the tests for determining managerial status in Bangladesh law is found in the judgment of Justices Syed Reefat Ahmed and Sheikh Hassan Arif in *Mehdi Hassan (Md.) and Ors v Government of Bangladesh and Ors*. In this 2012 decision, the court identified a set of evaluative criteria for determining whether an employee qualifies as a managerial or administrative employee: (i) whether the person has authority to make appointments; (ii) whether they have authority to take disciplinary action; (iii) whether they have policy-making responsibilities; and (iv) whether they exercise discretionary power of consequence within the organization. These four criteria are not presented as a closed or exhaustive list, but they represent the most systematic judicial attempt to date to provide operational content to the statutory exclusion.[60]

The *Bangladesh Labour Rules 2015* subsequently gave regulatory expression to a version of these criteria. Rule 2(1)(Nio) provides that a person will be working in an administrative or managerial capacity if they perform the following functions, being authorized in writing by the employer or management: (i) appointing workers or employees; (ii) determining salary and allowances; (iii) terminating service or removing from service; (iv) paying off final dues; and (v) approving or regulating the expenditures of the establishment. The written authorization requirement is significant: it implies that the managerial functions must be formally delegated, not merely informally assumed, and that the delegation itself can serve as an evidential benchmark.[61]

Rule 2(1)(Nio) represents a meaningful, if incomplete, advance on the purely judicial framework. By providing a list of specific functions, it gives both organizations and adjudicators

---

[59] *Pubali Bank Limited v The Chairman, First Labour Court* [2012] 9 ADC 966; ILO, *R198*, above note 53, para 9.
[60] *Md Mehdi Hassan and Another v Government of Bangladesh and Others* (above note 8).
[61] *Bangladesh Labour Rules 2015*, r 2(1)(Nio); GIZ, *Study on the Role of Supervisors in RMG Sector of Bangladesh* (above note 8) 11–12.

a reference point that goes beyond the vague qualifier ‘mainly managerial.’ However, the Rule’s adequacy is limited in several respects. It does not address the question of what happens where an employee formally possesses some of these authorities but exercises them only in a trivial or nominal way. It does not address the question of educational or skill-based distinctions. And it does not provide any salary threshold or quantitative anchor that would allow the boundary between worker and manager to be drawn with the consistency and predictability that commercial employers and their workforces require.[62]

### F. Critical Assessment of the Doctrinal Framework

The judicial doctrine that has accumulated over the decades since the 1965 Act is, in broad terms, protective and purposive. The courts have correctly identified that the managerial exclusion is susceptible to abuse and have responded by insisting on substantive rather than formal criteria for its application. The substance-over-title principle is doctrinally sound, the primary function test is well-calibrated to the statutory language, the evidentiary requirement guards against presumptive abuse, and the jurisdictional cases appropriately prevent the procedural exclusion of workers from the Labour Court.

Nevertheless, the existing framework has significant limitations. First, it is reactive rather than preventive: misclassification must be challenged through litigation before the courts can intervene, and the costs and delays of litigation may deter many employees from pursuing a remedy at all.[63] Second, the doctrine has developed unevenly: the tension between the Karnaphuli and Bangladesh Parjatan cases on the question of supervisory employees has not been resolved, leaving a zone of genuine uncertainty for employees in supervisory roles. Third, the criteria identified in Mehdi Hassan and Rule 2(1) (Nio), while useful, remain insufficiently structured to produce consistent results across different adjudicators.[64] Fourth and this point is critical neither the judicial doctrine nor the regulatory framework addresses the structural labour market conditions that make misclassification an attractive strategy for employers in the first instance.[65]

---

[62] GIZ (above note 8) 11–12; Ministry of Manpower, Singapore, *Employment Act: Who It Covers* (above note 9).
[63] Robayet Ferdous Syed, ‘Compliance with and Enforcement Mechanism of Labor Law: Cost-Benefits Analysis from Employers’ Perspective in Bangladesh’ (2023) 12(2) *Asian Journal of Business Ethics* 396.
[64] *Bangladesh Labour Rules 2015*, r 2(1)(j); GIZ (above note 8) 11, 16.
[65] Mustafizur Rahman, Debapriya Bhattacharya, and Md Al-Hasan, ‘Dimensions of Informality in Bangladesh Labour Market and the Consequent Wage Penalty’ (2019) 62(2) *Indian Journal of Labour Economics* 209–11.

Beyond the problem of misclassification proper, the case of *Amir Hossain Bhuiya (Md) v Harisul Haq Bhuiya and Others*[66] illustrates a further dimension of the definitional challenge: employees performing roles that are neither managerial nor conventionally productive in that case, Pesh Imams, Muazzins, and teachers employed by a factory may fall entirely outside the 'worker' definition without being managerial employees either. The Act's definition, structured around the binary of productive worker and managerial employee, has no adequate category for such individuals. This gap points to the need for definitional reform that goes beyond the manager/worker distinction alone.[67]

## VI. COMPARATIVE ANALYSIS WITH SINGAPORE

### A. The Comparative Rationale

Singapore is selected as the primary comparator in this analysis for reasons that go beyond mere convenience. Both Bangladesh and Singapore are former British colonies with common law legal systems, and both have developed their labour law frameworks from the same colonial foundations.[68] More significantly, Singapore's trajectory as a small, trade-dependent economy that has built a globally competitive labour market through deliberate legal and policy engineering makes it a particularly instructive model for a jurisdiction like Bangladesh, which is at an earlier stage of economic development but faces similar structural pressures around the management of a large formal workforce. Singapore has grappled explicitly with the manager/worker distinction in its Employment Act, and its approach has evolved in response to documented misclassification behaviour by employers a pattern strikingly similar to that observed in Bangladesh.

The comparison is not offered as a prescription for wholesale transplantation: Singapore's economic conditions, institutional capacity, and labour market characteristics differ substantially from Bangladesh's.[69] Per capita income, enforcement infrastructure, and the sophistication of

---

[66] *Md Amir Hossain Bhuiya v Harisul Haq Bhuiya and Others* (2000) 52 DLR 267.
[67] Nicola Kountouris, 'The Concept of 'Worker' in European Labour Law: Fragmentation, Autonomy and Scope' (2018) 47(2) *Industrial Law Journal* 192.
[68] Muhammad Ekramul Haque, *The Legal System of the People's Republic of Bangladesh*, October 2008 <[https://www.nyulawglobal.org/globalex/bangladesh.html]> accessed 9 July 2026; Singapore Academy of Law, *The Singapore Legal System* <[https://www.singaporelawwatch.sg/About-Singapore-Law/Singapore-Legal-System]> accessed 9 July 2026.
[69] Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37(1) *Modern Law Review* 1; Alan Watson, *Legal Transplants: An Approach to Comparative Law* (University of Georgia Press, 2nd ed, 1993).

https://doi.org/10.47126/nsulr.v1i1.05 

judicial and regulatory institutions are not directly comparable. Rather, the comparison is offered at the level of doctrinal framework examining which legal tools Singapore has deployed to address the manager/worker boundary problem and assessing their potential applicability, with appropriate adaptation, in the Bangladeshi context.

### B. The Structure of Singapore's Employment Act

The *Employment Act 1968* is Singapore's primary labour statute, governing the basic terms and conditions of employment for employees covered by the Act.[70] Like the Bangladesh Labour Act, it applies to employees engaged under a contract of service with an employer, and it covers full-time, part-time, contractual, and temporary employees. Like Bangladesh's Act, Singapore's Employment Act does not apply universally: it excludes certain categories of employee, including domestic workers and seafarers, and it applies differently depending on the nature of the work and the level of remuneration.[71]

The most significant structural feature of Singapore's Act for the purposes of this analysis is the differentiated treatment of managerial and executive employees in relation to Part IV of the Act.[72] Part IV governs rest days, hours of work, overtime, shift allowances, and related conditions of service.[73] It is, in essence, the portion of the Act that regulates the day-to-day terms of work in the most protective sense. Managerial and executive employees are not entitled to the protections of Part IV, and the mechanism by which they are excluded is more precisely calibrated than the equivalent exclusion in Bangladesh's framework.[74]

### C. The Salary Threshold Mechanism

Singapore's Employment Act, as amended, employs a salary-based threshold as the primary instrument for demarcating the boundary between employees covered by Part IV and those who

[70] Ministry of Manpower, Singapore, above note 9.
[71] Simon Deakin, 'Does the "Personal Employment Contract" Provide a Basis for the Reunification of Employment Law?' (2007) 36(1) *Industrial Law Journal* 68.
[72] George Feldman, 'Workplace Power and Collective Activity: The Supervisory and Managerial Exclusions in Labor Law' (1995) 37(2) *Arizona Law Review* 525.
[73] Lauren H. Cohen, Umit G. Gurun, and N. Bugra Ozel, 'Too Many Managers: The Strategic Use of Titles to Avoid Overtime Payments' (2026) 40(1) *The Review of Financial Studies* 1.
[74] Steven E. Abraham, 'The Supervisory Exclusion Under the NLRA: Has the Supreme Court Gone Too Far?' (2002) 6(1) *WorkingUSA* 77–78.

are not.[75] For an employee who falls within the Act's definition of 'workman' broadly, an employee whose work primarily involves manual labour. Part IV applies where their monthly basic salary is less than Singapore Dollars 4,500. For employees who are not workmen but are otherwise covered by the Act, Part IV applies where their monthly basic salary is less than Singapore Dollars 2,600.[76] Employees earning above these thresholds who are presumed to be in a stronger bargaining position and more likely to be in genuinely managerial or executive roles are not entitled to the Part IV protections, including overtime pay.

This salary threshold mechanism has several important attributes. First, it is objective: unlike the functional criteria in Bangladesh's framework, which require a fact-specific inquiry into the nature of an employee's actual responsibilities, the salary threshold can be applied mechanically to the terms of the employment contract. This objectivity reduces the scope for litigation about the threshold itself, even if questions about the appropriate threshold level remain live policy debates.[77] Second, it is progressive: by setting different thresholds for manual workers and non-manual workers, the mechanism acknowledges that the appropriate point at which employees can reasonably be assumed to be outside the need for Part IV protection differs according to the character of the work. Third, it is transparent: an employee can determine their status under Part IV by reference to a publicly known salary figure, without requiring legal advice or judicial resolution.[78]

The salary threshold does not operate in isolation. Singapore's Employment Act and the guidelines issued by the Ministry of Manpower (MOM Guidelines) also provide a functional framework for identifying managers and executives: such employees are described as those with executive and supervisory functions comprising authority over discipline, termination, recruitment, strategy, performance review, reward, and the general management of the business.[79] The salary threshold and the functional criteria work together: an employee earning above the

---

[75] Simon Deakin, 'Decoding Employment Status' (2020) 31(2) *King's Law Journal* 180–81.
[76] Ministry of Manpower, Singapore, above note 9.
[77] Kenneth G. Dau-Schmidt, 'The Problem of 'Misclassification' or How to Define Who Is an 'Employee' under Protective Legislation in the Information Age', in Richard Bales and Charlotte Garden (eds), *The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century* (Cambridge University Press, 2019) 140–42.
[78] Miriam Kullmann, ''Platformisation' of Work: An EU Perspective on Introducing a Legal Presumption' (2022) 13(1) *European Labour Law Journal* 66–68.
[79] Ewan McGaughey, 'Uber, the Taylor Review, Mutuality and the Duty Not to Misrepresent Employment Status' (2019) 48(2) *Industrial Law Journal* 180–81.

threshold and performing genuine executive functions is clearly excluded from Part IV; an employee earning below the threshold cannot be excluded by designation alone.

### D. Judicial Elaboration: *Hasan Shofiqul v China Civil (Singapore) Pte Ltd*

The case of *Hasan Shofiqul v China Civil (Singapore) Pte Ltd [2018] SGHC 128* provides the most detailed judicial elaboration of Singapore's approach to the manager/worker distinction in the modern employment law context. The case arose from a claim by Mr Shofiqul, a site supervisor employed by the Singapore subsidiary of a Chinese construction company, for overtime pay under Part IV of the Employment Act.[80] The company resisted the claim on the ground that Mr Shofiqul was employed as a manager or executive, and was therefore excluded from Part IV's protections. The case came before the High Court on appeal from the decision of the Assistant Commissioner for Labour, who had found in Mr Shofiqul's favour.

The High Court's judgment is significant on several grounds. First, the court held that Mr. Shofiqul's supervisory role was not by itself sufficient to make him a manager or executive for the purposes of the Act. The mere fact of supervising other employees is not determinative: the character and scope of the supervision must be assessed.[81] In Mr. Shofiqul's case, the court found that his supervision was 'hands-on' in nature he directed the immediate work activities of his team, applied for daily work permits on the team's behalf, maintained records of work completed, and conducted informal safety briefings. These were operational and administrative tasks, not exercises of genuine managerial discretion.[82]

Second, and most importantly for comparative purposes, the court emphasized that Mr. Shofiqul lacked the power to make decisions regarding the hiring, firing, promotion, transfer, reward, or discipline of the workers under his supervision.[83] Within his role, he could provide feedback and recommendations to his superiors, but ultimate decision-making authority over these matters remained with those superiors. This finding echoes the criteria articulated in the Bangladeshi Mehdi Hassan judgment and in Rule 2(1) (Nio) of the Labour Rules 2015: the

---

[80] *Hasan Shofiqul*, above note 9, [1]–[5], [9]–[14].
[81] Feldman, above note 72, 525–32.
[82] Valerio De Stefano, Ilda Durri, Charalampos Stylogiannis, and Mathias Wouters, 'Does Labour Law Trust Workers? Questioning Underlying Assumptions Behind Managerial Prerogatives' (2024) 53(2) *Industrial Law Journal* 206–09.
[83] *Hasan Shofiqul*, above note 9, [70].

authority to make consequential decisions about the employment of others is a key distinguishing feature of genuine managerial status.

Third, the court in China Civil placed significant weight on Mr. Shofiqul's educational credentials and formal qualifications as a factor relevant to his status as an executive.[84] The court noted that Mr. Shofiqul did not hold a diploma and lacked the specialized skills or formal training that would typically be expected of an executive employee in the construction industry. This criterion the educational and credentialing dimension of managerial classification has no equivalent in Bangladesh's statutory framework or in the criteria identified by Mehdi Hassan, and represents one of the most significant points of divergence between the two jurisdictions' approaches.

### E. Comparison: Bangladesh and Singapore

A structured comparison of the two frameworks reveals important similarities and significant differences. Both jurisdictions begin from the same foundational premise: the employment relationship is regulated by statute, but employees in genuinely managerial roles are entitled to fewer statutory protections in respect of working conditions, on the assumption that they are in a stronger bargaining position and have different working arrangements. Both jurisdictions have recognized that this premise is susceptible to abuse through the assignment of managerial designations to employees who are not genuinely managerial.[85] And both have responded with a doctrinal insistence that the actual functions of the employment its substance must determine its legal character.[86]

The differences, however, are instructive. Singapore's framework has achieved a degree of operational precision that Bangladesh's has not. The salary threshold provides a clear, objective, and easily applicable criterion that reduces the need for costly, uncertain litigation about classification in the vast majority of cases.[87] The threshold is accompanied by MOM Guidelines

---

[84] Ibid, [65], [68]–[69].

[85] Noah D. Zatz, 'Beyond Misclassification: Tackling the Independent Contractor Problem Without Redefining Employment' (2011) 26(2) *ABA Journal of Labor & Employment Law* 279–81; Cohen, Gurun, and Ozel (above note 73) 1–2.

[86] A. C. L. Davies, 'Getting More Than You Bargained for? Rethinking the Meaning of 'Work' in Employment Law' (2017) 46(4) *Industrial Law Journal* 477–80.

[87] David Cabrelli, 'The Hierarchy of Differing Behavioural Standards of Review in Labour Law' (2011) 40(2) *Industrial Law Journal* 146–48.

https://doi.org/10.47126/nsulr.v1i1.05

that give practical content to the functional criteria. Judicial decisions such as China Civil provide detailed, operationally specific guidance on how the functional test applies in concrete employment scenarios. The result is a framework that, while not perfect, provides meaningfully more predictability and fewer incentives for opportunistic misclassification than the Bangladeshi framework currently does.[88]

Bangladesh's framework, by contrast, relies almost entirely on post-hoc judicial determination of individual cases.[89] The criteria in Mehdi Hassan and Rule 2(1) (Nio) provide useful guidance but are not anchored by any quantitative threshold. The evidentiary requirement for positive proof of managerial functions is protective in principle but depends on litigation being initiated a significant barrier given the power asymmetry between employers and employees in Bangladesh's labour market.[90] The inconsistency between the Karnaphuli and Bangladesh Parjatan decisions on supervisory employees creates genuine uncertainty for a significant category of workers. And the failure to address the educational and credentialing dimension identified in China Civil leaves another potential avenue for abuse unremedied.

One area in which Bangladesh's case law offers a potentially superior approach is in the treatment of misclassification motivated by bad faith. The *Dosta Textile Mills case*, in which the court drew attention to the timing of the reclassification, demonstrates a judicial willingness to consider the context and motivation of classification decisions that goes beyond the purely functional inquiry. Singapore's framework, being more mechanistic, may be less well-equipped to address strategically motivated misclassification that satisfies the formal criteria but is not genuinely managerial in character. This is a dimension that any reformed Bangladeshi framework should seek to preserve.

## VII. RECOMMENDATIONS

The analysis in the preceding sections reveals a coherent set of reforms that would substantially address the misclassification problem in Bangladesh while preserving the legitimate organisational interest in distinguishing genuinely managerial employees from the broader worker category.

[88] Guy Davidov and Pnina Alon-Shenker, 'The ABC Test' (2018) 40(2) *Comparative Labor Law & Policy Journal* 235–76.
[89] GIZ (above note 8) 11–12, 43–45.
[90] Daniel Berliner, Anne Greenleaf, Milli Lake, and Jennifer Noveck, 'Building Capacity, Building Rights? State Capacity and Labor Rights in Developing Countries' (2015) 72 *World Development* 127–30.

https://doi.org/10.47126/nsulr.v1i1.05 

These recommendations operate at three levels: legislative amendment, regulatory elaboration, and judicial reform.[91] They are presented in order of structural priority.

### A. A Statutory Multi-Factor Framework

The most fundamental reform required is the enactment of a statutory multi-factor framework for determining whether an employee is 'mainly employed in a managerial or administrative capacity' within the meaning of section 2(65) of the Labour Act 2006. The current open-ended formulation has, despite the judicial doctrine developed under it, proven inadequate as a deterrent to misclassification. A statutory framework would serve three functions: it would provide ex ante guidance to organizations, reducing the incidence of misclassification through clarity; it would provide a structured standard for adjudicators, reducing the inconsistency that currently characterizes the case law; and it would shift the balance of power toward employees by making the criteria for the exclusion explicit and therefore contestable.[92]

The proposed framework should incorporate the following cumulative elements. First, the authority criterion: the employee must hold written authorization, formally delegated by the employer, to perform at least three of the five functions specified in Rule 2(1) (Nio) of the Labour Rules 2015 — namely, appointing workers or employees, determining salary and allowances, terminating service, paying final dues, and approving or regulating expenditures. The written authorization requirement already exists in Rule 2(1) (Nio); elevating it to statutory status would strengthen its force.[93] Second, the decision-making criterion: the employee must exercise these authorized powers with genuine independent decision-making authority, not merely a recommendatory or advisory role. The Mehdi Hassan criteria authority to appoint, discipline, make policy, and exercise discretion are the appropriate reference point here. Third, the primary function criterion: the authorized functions must constitute the primary or dominant mode of the employee's employment, not an incidental or nominal addition to otherwise non-managerial work. This codifies the primary function test that the courts have developed through the Karnaphuli and related decisions.

---

[91] Matthew Amengual, 'Complementary Labor Regulation: The Uncoordinated Combination of State and Private Regulators in the Dominican Republic' (2010) 38(3) *World Development* 405–09.
[92] ILO, *R198*, above note 53, paras 10–13, 15–17; Davidov and Alon-Shenker (above note 88) 235–76.
[93] *Bangladesh Labour Rules 2015*, r 2(1)(Nio); GIZ (above note 8) 11–12.

These three criteria should be expressed as conjunctive requirements: all three must be satisfied for the managerial exclusion to apply.[94] The conjunctive structure prevents abuse through partial satisfaction: an employer cannot achieve the exclusion by delegating nominal authority in writing without genuine decision-making power, or by ensuring that the employee performs some managerial functions as a secondary element of an otherwise non-managerial role.

### B. The Introduction of a Salary Threshold

The framework should be anchored, following Singapore's example, by a salary threshold.[95] This paper recommends that an employee earning below a specified monthly basic salary threshold should be presumptively classified as a worker, not subject to the managerial exclusion, regardless of their designation or the functions formally attributed to them. The threshold would serve as a bright-line rule at the lower end of the income distribution, where misclassification is most harmful (because employees are most financially vulnerable) and most common.

The appropriate threshold for Bangladesh cannot be mechanically imported from Singapore, whose labour market and wage levels are radically different.[96] The threshold should be determined through consultation between the Ministry of Labour and Employment, employers' organizations, and trade unions, with reference to median formal sector wages. As a starting point, a threshold anchored to a multiple of the national minimum wage for relevant sectors perhaps three to four times the minimum daily wage, expressed as a monthly figure would be consistent with the policy objective of protecting lower-income formal sector workers while excluding genuinely high-remuneration managerial employees from the calculation. The threshold should be subject to periodic revision through a transparent regulatory process, indexed to wage growth.

The threshold would operate as a presumption, not as an absolute rule.[97] An employer wishing to treat an employee earning above the threshold as a worker for purposes of extending statutory benefits could do so. More importantly, an employee earning above the threshold could still contest their managerial classification by demonstrating that they do not satisfy the multi-factor criteria preventing the threshold from becoming a tool for exclusion of well-paid but genuinely non-

---

[94] Davidov and Alon-Shenker (above note 88) 235–76; ILO, *R198*, above note 53, paras 11–13.
[95] Ministry of Manpower, Singapore, above note 9.
[96] Thomas Farole, Yoonyoung Cho, Laurent Bossavie, and Reyes Aterido, *Bangladesh Jobs Diagnostic* (World Bank, 2017) 1–2; Kahn-Freund (above note 69) 1–27.
[97] Davidov and Alon-Shenker (above note 88) 235–76.

https://doi.org/10.47126/nsulr.v1i1.05 

managerial employees.[98] Conversely, for employees earning below the threshold, the managerial exclusion would simply not be available, regardless of the designation.

### C. Codification of the Substance-Over-Title Rule

The substance-over-title principle, while well-established in Bangladeshi case law, should be codified in the Labour Act itself.[99] An express statutory provision should be inserted stating that the designation or title assigned to an employee is not determinative of their status as a worker or managerial employee, and that the court or adjudicator must look to the actual functions performed and the authority actually exercised in making this determination. Codification of this principle would serve two purposes: it would give the principle the force of statute, making it unambiguous that designation-based arguments are inadmissible as a primary basis for classification; and it would ensure that the principle is known to and applied by adjudicators at all levels, including Labour Court judges who may not have access to the full body of appellate case law.

### D. Educational and Credentialing Criteria

Drawing on the China Civil judgment's attention to formal qualifications and specialized training as criteria relevant to executive status, the reformed framework should incorporate an educational or credentialing criterion.[100] Specifically, it should be provided that employees who do not hold a minimum level of formal education relevant to a managerial role in the relevant industry — for example, a bachelor's degree for office-based roles or a relevant vocational diploma for technical supervisory roles cannot be classified as managerial employees solely on the basis of their designated title or function, unless the organization can demonstrate through positive evidence that the employee has acquired equivalent knowledge and capability through substantial relevant experience.

This criterion addresses a specific mode of misclassification that the existing framework does not capture: the assignment of managerial titles to employees who lack the human capital

[98] Joe Atkinson and Hitesh Dhorajiwala, 'The Future of Employment: Purposive Interpretation and the Role of Contract after Uber' (2022) 85(3) *Modern Law Review* 787–92.
[99] ILO, *R198*, above note 53, para 9; Guy Davidov, 'Who Is a Worker?' (2005) 34(1) *Industrial Law Journal* 57–71.
[100] *Hasan Shofiqul*, above note 9, [65], [68]–[69]; GIZ (above note 8) 11–12.

characteristics of genuine managers. It is also consistent with Bangladesh's broader policy interest in encouraging formal education and skills development in the workforce.

### E. Reversal of the Evidentiary Burden

The reformed framework should expressly reverse the evidentiary burden in misclassification disputes.[101] The amended Labour Act should provide that, in any dispute about whether an employee falls within the definition of 'worker,' the burden of establishing that the employee is excluded from the worker definition lies on the employer, and must be discharged by positive evidence of the actual functions performed and the authority actually exercised. This codifies the principle already implicit in cases such as *Rupali Bank v Patwary and Contiforms Forms Limited*, but makes it explicit and statutory.

Reversal of the burden is particularly important given the information asymmetry between employers and employees. The employer is best placed to produce evidence of the nature of the employment: it controls the employment contract, the organizational chart, the delegation of authority documents, and the records of decisions made by the employee.[102] Requiring the employer to produce this evidence is both procedurally fair and practically efficient.

### F. Strengthening the Access to Alternative Remedies

The reforms proposed above address the primary problem of misclassification, but they should be supplemented by measures to strengthen the remedies available to employees who cannot access the Labour Court. As the analysis in Part III indicates, employees of excluded organizations educational institutions, non-profit hospitals, and government entities cannot rely on the Labour Act at all, and must depend on their employment contracts and internal service rules.[103] For such employees, the civil court route offers a formal remedy but one that is slow, costly, and typically disadvantageous given the employer-drafted contract terms.[104]

The limitation of writ jurisdiction is particularly constraining: the High Court Division's writ jurisdiction is generally unavailable for disputes involving purely private parties, and the rule that

---

[101] ILO, *R198*, above note 53, paras 11–13; Davidov and Alon-Shenker (above note 88) 235–76.
[102] *Hasan Shofiqul*, above note 9, [151]–[157].
[103] *Bangladesh Labour Act 2006*, s 1(4)(a), (d), (g), (h).
[104] Syed (above note 63) 396–97.

disputed questions of fact cannot be resolved in writ proceedings means that classification questions which are quintessentially factual are not amenable to this remedy even where a public element is present. Reform should consider the possibility of extending the jurisdiction of a reformed Labour Court or of a new specialist employment tribunal to cover misclassification disputes arising from excluded organizations, at least where the organization has a significant commercial element.

### G. Proactive Compliance and Enforcement

Doctrinal and judicial reforms, however well-designed, will not by themselves resolve the misclassification problem.[105] The problem is rooted in structural conditions employer market power, low employee awareness of rights, and inadequate enforcement that require administrative responses as well as legal ones.[106] The Ministry of Labour and Employment should establish a programme of proactive compliance auditing in sectors where classification disputes and labour-law violations are structurally difficult to detect.[107] Employers found to have systematically misclassified employees should be subject to proportionate financial penalties, with the proceeds directed to the benefit of the affected employees.

In addition, the Act should be amended to require every employer to provide each employee, at the time of engagement, with a written statement of whether the employee is classified as a worker or a managerial employee under the Act, together with the reasons for the classification.[108] Where the employer classifies the employee as managerial, the statement must identify the specific functions and authority upon which the classification rests. This requirement, simple in its operation, would create a paper trail that would both deter casual misclassification and facilitate subsequent litigation where misclassification is nonetheless alleged.[109]

[105] Robayet Ferdous Syed, 'Intertwine Preventive (Ex-Ante) and Deterrent (Ex-Post) Mechanisms for Compliance with and Enforcement of Labor Laws: A Comprehensive Approach for Bangladesh' (2024) 11 *Humanities and Social Sciences Communications* 1013.
[106] Fahreen Alamgir and Subhabrata Bobby Banerjee, 'Contested Compliance Regimes' (2019) 32 *Journal of Business Ethics* 272–76; Ahmed (above note 43) 881–85.
[107] ILO, *R198*, above note 53, paras 15–17; Syed (above note 105) 1013.
[108] Syed (above note 63) 404–06; ILO, *R198*, above note 53, paras 11–13.
[109] *Hasan Shofiqul*, above note 9, [151]–[157]; Syed (above note 63) 404–06.

## VIII. CONCLUSION

The definitional boundary between 'worker' and 'managerial employee' in Bangladesh labour law is not merely a technical question of statutory interpretation.[110] It is the front line of a conflict between the protective purposes of the Labour Act and the organizational interest in maximizing operational flexibility and minimizing the costs of employment. The history of this conflict, as the case law examined in this article demonstrates, is one of repeated judicial correction of employer abuses a pattern of misclassification, litigation, and judicial vindication that has been replicated across industries and decades without generating the systemic change that would reduce the need for individual redress.

The judiciary of Bangladesh has developed, in response to this problem, a coherent and principled body of doctrine: substance prevails over title; the primary function of the employment determines its legal character; the employer must adduce positive evidence of genuine managerial functions; and the conferral of a designation does not confer the legal status that designation nominally implies. This doctrine is sound, and it has provided meaningful protection to individual employees who have had the awareness and resources to bring their claims. But it has not produced the ex ante clarity, the consistent application, or the preventive effect that the scale of the misclassification problem requires.[111]

Singapore's experience, and in particular the salary-threshold mechanism anchored in Part IV of its Employment Act and given doctrinal elaboration by the China Civil judgment, offers a judicially tested model for a more structured approach.[112] The model is not directly transplantable the threshold level must be calibrated to Bangladesh's economic conditions, and the institutional capacity for enforcement differs significantly between the two jurisdictions but the architecture is replicable: a combination of an objective quantitative threshold, explicit functional criteria expressed in statute, a reversed evidentiary burden, and clear guidance on the relevance of educational credentials can together produce a framework that is both more protective of workers and more predictable for employers.

---

[110] Davidov (above note 99) 57–71.
[111] GIZ (above note 8) 11–12, 43–45; Syed (above note 105) 1013.
[112] Ministry of Manpower, Singapore, above note 9; *Hasan Shofiqul*, above note 9, [68]–[73].

https://doi.org/10.47126/nsulr.v1i1.05 

The reforms proposed in Part VII of this article provide a concrete implementation pathway for such a framework. They are designed to be mutually reinforcing: the salary threshold reduces the scope of the definitional dispute for lower-income employees; the multi-factor statutory criteria provide an operationally clear standard for employees above the threshold; the reversed burden and the written classification requirement strengthen enforcement; and the attention to educational credentials addresses a specific mode of abuse that neither the existing statute nor the case law adequately confronts. Together, these reforms would represent a substantial advance in the legal protection of Bangladesh's formal sector workforce and a recognition that the Labour Act's promise of protection is only as good as the precision with which it defines those it protects.[113]

–

[113] ILO, *R198*, above note 53, paras 9–13, 15–17; Davidov (above note 99) 57–71; Davidov and Alon-Shenker (above note 88) 235–76.