DOI: https://doi.org/10.3329/rulr.v13i1.92381

The Enforceability of Employment Bonds in the Private Job Sectors of Bangladesh: A Critical Analysis

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Abstract

Job offers often include signing employment bonds that restrict employees from leaving before a specified period and impose penalties for non-compliance. These bonds may also involve unfair practices, such as retaining original documents, denying release letters, or demanding excessive compensation. These lead to harassment when employees try to switch jobs. This paper examines the legal status of such bonds, as well as the terms and conditions outlined therein, based on the provisions enshrined in the relevant laws and judicial decisions. It adopts a case study approach backed by qualitative data and then applies a hermeneutic phenomenological approach to the analysis of statutory provisions. The findings reveal that although such bonds aim to protect organizational interests, they are frequently excessive, one-sided, and legally ambiguous. Employers often impose penalties far exceeding any actual loss. On the other hand, employees frequently face financial losses through illegal deductions from salaries or provident funds, threats of legal action, complexities in obtaining release orders and switching jobs, forced obligation to work due to the forceful possession of academic certificates by employers, and many more. They rarely seek legal remedies due to a lack of awareness, fear of employer retaliation, and the perceived complexity of the judicial process. The study calls for the enactment of explicit statutory provisions to protect employees from harassment and ensure redressive mechanisms. It recommends that regulatory bodies actively inspect private service rules to ensure they do not offer fewer protections than the Bangladesh Labour Act. Furthermore, the judiciary must set clear precedents to balance between reasonable bonds and abusive practices. The bond's duration should be reasonable, with compensation not exceeding the expenses incurred for the employee's training or grooming.

Keywords: *Employment bond, Private job sector, Labour law, Worker rights, Human rights*

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1. Introduction

The progressive essence of the modern workforce and the evolving nature of employment relationships have given rise to diverse contractual arrangements aimed at safeguarding the mutual interests of employers and employees. Among these, employment bonds have become a common feature in the private job sectors of Bangladesh. These bonds are often introduced to ensure job stability, recover training costs, or secure loyalty from employees. While it may be argued that an employment bond is a legitimate contract under the principles of the law of contract and that its enforceability is legally sound, it is equally undeniable that such bonds can sometimes serve as instruments of exploitation and harassment.

In many instances, employees are compelled to sign bonds with onerous terms, such as mandatory service periods, excessive penalty clauses, or restrictions on professional mobility. These practices raise significant concerns about the balance between organizational interests and individual rights, as well as about the adequacy of existing legal frameworks to regulate such arrangements. Consequently, there is a pressing need to examine both the conceptual and practical dimensions of employment bonds and their compliance with the broader principles of fairness, reasonableness, and contractual justice. Against this backdrop, this study assesses the legal standing of employment bonds, identifies the hassles and challenges employees face due to such contractual arrangements, and evaluates the enforceability of the terms and conditions typically stipulated within them.

2. Materials and Methods

The study adopts a qualitative case study approach, which allows for an in-depth understanding of the lived experiences of employees bound by such contractual terms. Complementing this, a hermeneutic phenomenological approach is employed to interpret relevant statutory provisions and legal principles. The qualitative findings are systematically aligned with the legal framework to explain the prevailing realities surrounding employment bonds in Bangladesh's private sector.

For the case study component, nine randomly selected participants were interviewed using an open-ended questionnaire to capture nuanced insights into their personal and professional experiences. Given that the issue involves sensitive aspects of private employment, the number of respondents remained limited, and participants were often hesitant to disclose detailed information. Consequently, the study acknowledges the limitation of data scarcity. Despite this, the collected data were carefully coded into several thematic categories and analyzed to address the following research questions:

i. What factors influence employers in determining the terms of employment bonds?
ii. What are the consequences of employment bonds for employees?
iii. What legal implications arise from the breach of employment contracts?

3. Conceptual Definitions

The following definitions are required to understand the subject matter and scope of this study.

3.1 Employment Bond

An employment bond is not defined in any statute. It, in its simplest form, is an agreement between an employer and employee articulating the rules that will govern the latter's employment within the company.[1] This is intended to protect both parties.[2] It also sets

[1] Monar Purohit, 'Employment Bond: Validity, Enforceability and Legality' (Legal Service India), available at *https://legalserviceindia.com/legal/article-10151-employment-bond-validity-enforceability-and-legality-.html*, accessed on 22 September 2023.

out the period of time that an employee has to remain in employment with the employer, as well as the amount of compensation that an employee must pay in the instance of non-compliance. In other words, it is an agreement that outlines employment terms and includes a stipulation that the employee must pay the employer an amount specified in the agreement to compensate the employer for the loss experienced due to the employee's voluntary resignation.[3] This agreement can be referred to as a service bond, surety bond, or employment bond. Since it is a contractual obligation, it is regulated according to the Contract Act of 1872, as it is with any other contract.

3.2 People falling under the category of employee

To understand the contractual obligations between the employer and the employee, it is necessary to first define who is an employee under the law governing the private job sector. While government institutions in Bangladesh are governed by their respective service rules, private-sector entities operate primarily under their own organizational policies and service regulations. Section 2(65) of the Labour Act defines 'worker' to mean any person, including an apprentice employed in any establishment or industry, either directly or through a contractor, by whatever name he is called to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment are expressed or implied. Managerial, administrative, or supervisory employees in private companies often do not fall under the definition of worker and therefore are not fully covered by the Labour Act. Instead, their employment is typically regulated by individual employment contracts. Under this definitional clause, there are two sorts of establishments: commercial establishments and industrial establishments.

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[2] Nandini Mukati, 'Employee Bond Agreement' (*iPleaders*, 27 April 2022) <https://blog.ipleaders.in/employee-bond-agreement/> accessed 22 September 2023.

[3] Abhishek Sahoo, 'The Legal Stature of Employment Bond in India' (*MyAdvo.in*, 24 July 2018), avabible at *https://www.myadvo.in/blog/the-legal-stature-of-employment-bond-in-india/*, accessed on 22 September 2023.

Commercial establishment has been defined in section 2(41) to mean a place where activities like advertising, commission, or forwarding business occur. It also includes specific types of establishments like clerical departments in factories, offices of contractors, units of joint-stock companies, insurance and banking companies, brokers' offices, stock exchanges, clubs, hotels, restaurants, cinemas, and others as declared by the Government through official notification for the purposes of this Act. It was held in a case that, since banks and banking companies have been included in the definition, individuals employed thereon are well within the meaning of workers under the Labour Act.[4] For example, Sonali Bank is a commercial establishment.[5] However, Dhaka Improvement Trust, present-day RAJUK, is not.[6]

An industrial establishment, on the other hand, as defined in section 2(61), refers to a place where articles are produced, adapted, or manufactured. It includes activities like making, altering, repairing, ornamenting, finishing, packing, or otherwise treating articles or substances for their use, transport, sale, delivery, or disposal. This definition also encompasses specific types of establishments designated by the Government, such as road and railway transport services, airlines, docks, mines, factories, newspapers, construction contractors, shipbuilding and recycling, welding, security personnel suppliers, ports, mobile and landline operators, radio/TV channels, real estate, courier and insurance companies, fertilizer and cement manufacturers, for-profit clinics/hospitals, rice mills, sawmills, fishing trawlers, fish processing industries, and sea-going vessels.

It should be mentioned that even though the Labour Act applies to the whole of Bangladesh, it does not cover certain entities under section 1(4) including government offices, security printing presses, ordnance factories, non-profit establishments for the care of various vulnerable groups, retail stalls at public exhibitions or charitable fairs, educational and research institutions, non-profit hostels and

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[4] *Md. Sahabuddin vs. Janata Bank* [1989] 41 DLR 94, *State vs. Abdul Aual* [1983] 35 DLR 151.

[5] *Managing Director, Sonali Bank vs. Md. Jahangir Kabir Molla* [1996] 48 DLR 396.

[6] *Chairman, DIT vs. Second Labor Court, Dhaka* [1982] 34 DLR (AD) 37.

messes, government-managed establishments with worker conduct rules, workers recruited under specific constitutional provision (except for certain government departments), university teachers (except for specific chapters), seamen (except for specific chapters), ocean-going vessels (except for a specific chapter), small agricultural farms with less than ten employees, domestic servants, and family-run establishments without hired labour. Therefore, an employee is a worker under section 2(65) employed in any commercial or industrial establishment that is not on the excluded list of section 1(4).

It should also be highlighted that there exists a certain level of ambiguity in defining the term worker, as individuals employed in managerial, administrative, or supervisory roles are often excluded from this classification. While the Bangladesh Labour Rules of 2015 define these terms, mid-level managers who do not receive dividends from companies or institutions are frequently excluded from its coverage. This results in two forms of injustice. First, these individuals are forced into accepting one-sided employment contracts, with terms dictated solely by the employer. Second, the injustice is further exacerbated when they are denied protection under labour laws, leaving them unrecognized as workers and vulnerable to exploitation that can be likened to modern-day slavery. Regardless of whether individuals fall within the legal definition of a worker, this analysis not only focuses on those who are covered by it, but also on those who, not being covered, are subjected to such abusive practices in the private job sector.

4. Relevant Legal Frameworks

The legal frameworks governing private employment encompass a set of rules and regulations that outline the rights, responsibilities, and obligations of both employers and employees within the private sector. Understanding these legal frameworks is essential.

4.1 Constitutional Framework: Bangladesh is a unitary, independent, and sovereign Republic.[7] The Constitution of the People's Republic of Bangladesh is the supreme law of the Republic, and any other law that contradicts this Constitution shall be void to the extent of its contradiction.[8] Part II of the Constitution outlines the fundamental principles of state policy, and Part III enumerates an array of fundamental rights. It has to be taken into account that while the former is not judicially enforceable in court, the latter is.[9]

According to Article 40 of the Constitution, which guarantees the freedom of profession and occupation, every citizen has the right to engage in any lawful profession, occupation, trade, or business, provided they meet the qualifications, if any, that may be required by law for their chosen field. This right is subject to any restriction imposed by law. Moreover, Article 34(1) provides that all forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable by law.

4.2 International Instrument: Bangladesh is a member of the International Labour Organization (ILO). In 1957, the ILO formulated the Abolition of Forced Labour Convention. This is known as Convention No. 105, which was ratified by the Bangladesh government in 1972.[10] Article 1(c) obliges each member of the International Labour Organization that ratifies this Convention to undertake measures to suppress and not to make use of any form of forced or compulsory labour as a means of labour discipline.

4.3 Labour Act, 2006: The Bangladesh Labour Act, 2006 governs private-sector employment for those who fall under the legal

[7] Constitution of the People's Republic of Bangladesh (P. O. No. 76 of 1972), art. 1 (Constitution).
[8] Constitution, art. 7(2).
[9] Constitution, art. 8 and 44.
[10] 'Convention C105 - Abolition of Forced Labour Convention, 1957 (No. 105)' (International Labour Organization) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105> accessed 22 September 2023.

definition of a worker as stated in Section 2(65) of the Act.[11] Regarding conditions of employment, Section 3 enumerates that every establishment must follow the rules in Chapter II when it comes to regulating the employment of workers and other related issues, with the exception that while any institution may have its own rules governing the same, no such regulations may be less favourable to any employee than those outlined in that chapter. In 2013, a significant amendment was introduced to provide that the institutions to which this Act is not applicable shall not make any policies, rules, or house policies with less privileges than those provided in this Act. Additionally, the service rules in any establishment indicated in the exception shall be submitted for approval by the employer of such establishment to the Chief Inspector, who shall make such order therein as he considers proper within six months of receipt thereof. No such service rules shall be enforced until approved by the Chief Inspector. However, this approval procedure does not apply to any establishment owned, managed, or controlled by the government.

Section 27 prescribes a mode of termination of employment by workers. It provides that a permanent employee can resign from his or her position by providing written notice of sixty days to the employer. However, if any person is a temporary employee and a monthly rated one, he or she may resign from his or her position by giving the employer written notice of thirty days, or of fourteen days in the case of other employees. Additionally, if a worker wishes to resign from his position without giving notice, he may do so by paying the employer salary in lieu of the notice necessary under the preceding instance.[12]

Sub-section 3A provides that, regardless of what is stated in sub-section (3), if an employee is absent from work for more than 10 days without permission or notice, the employer must provide the worker 10 days to return to work and explain their absence. The employee will have an additional seven days to explain himself if he

[11] The Bangladesh Labour Act, 2006 (Act No. 42 of 2006) (Labour Act).

[12] Labour Act, sec. 27(3).

fails to submit a written justification or get started working within the allotted time. Nevertheless, if the worker does not join the service or defend himself, he will be considered to have resigned from the service as of the day of absence. It is to be noted that the words 'been released' were substituted by the word 'resigned' by section 4 of the Bangladesh Labour (Amendment) Act, 2018.

Any establishment in the private sector may constitute a provident fund for the benefit of its workers.[13] At the same time, section 29 provides that if a worker is a member of a provident fund and is entitled to any benefit from the fund, including the employer's contribution under the rules of the fund, he shall not be deprived of such benefit because of retrenchment, discharge, dismissal, retirement, removal, termination of service, or death.

4.4 Contract Act, 1872: The Contract Act[14] shall apply to the contractual provisions of the employment bond because it is a contract between the employer and the employee. Section 2(h) of the Contract Act defines a contract as an agreement enforceable by law. The conditions of competent parties, free consent, lawful consideration, lawful object, and not being expressly declared void by law are laid out in section 10, which provides a clear answer to the question of when an agreement will be enforceable by law.

Certain agreements have been expressly declared void by the Contract Act. An agreement in restraint of trade is one of them. Section 27 lays down that every agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind is, to that extent, void. Moreover, section 74 states that if a contract is breached and it specifies a sum to be paid in such cases, or if it includes a penalty clause, the aggrieved party can receive reasonable compensation not exceeding the specified sum or stipulated penalty, irrespective of the actual loss caused by the breach.

[13] Labour Act, sec. 264(1).
[14] The Contract Act, 1872 (Act No. IX of 1872).

4.5 Specific Relief Act, 1877: In legal terms, when a contract exists, there is a requirement to fulfil the obligations outlined within it. This is referred to as the specific performance of a contract. Section 12 of the Specific Relief Act[15] provides that specific performance is enforceable when the act constitutes part of a trust, there is a standard to ascertain damage, no adequate relief exists, and no pecuniary compensation is available. On the other hand, section 21 outlines certain contracts as unenforceable, such as when compensation for non-performance is an adequate relief, or where there is a contract which involves performance of a continuous duty extending over a longer period than three years from its date, etc.

4.6 Penal Law: Section 405 of the Penal Code[16] states that if someone entrusted with property or authority over it dishonestly uses or disposes of it contrary to legal directives or agreements regarding its management, or allows someone else to do so, they are guilty of committing criminal breach of trust.

5. Findings from the Case Studies

A questionnaire was developed with careful consideration of the relevant legal context, and in-depth interviews were conducted with nine randomly selected respondents who had experienced the effects of employment bonds. The qualitative analysis of these interviews led to the identification and subsequent codification of several key themes.

5.1 In response to the first research question:

Respondent 1 stated that employers generally seek to prevent their employees from switching jobs, as such turnover is perceived to cause organizational losses. Consequently, employment bonds are viewed by employers as essential instruments for protecting the organization's interests. This perspective was coded as 'Saving Organizational Interest,' a theme that was endorsed by three additional respondents and referenced a total of four times across the interviews.

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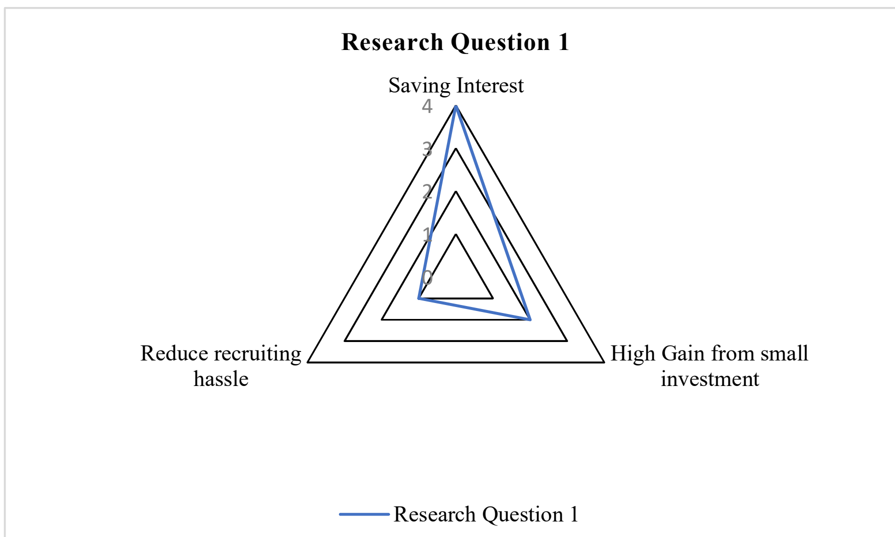
[15] The Specific Relief Act, 1877 (Act No. 1 of 1877).
[16] The Penal Code, 1860 (Act No. XLV of 1860).

According to Respondent 2, employers aim to maximize profit with minimal investment. He explained that, although companies tend to offer relatively low salaries, they often require extended working hours and benefit financially from the restrictive provisions of employment bonds. He further noted that, while initially only one month's notice was required for resignation, the Human Resources (HR) department later extended this period to two months, an apparent attempt to retain employees by any means necessary. These observations were coded under the theme 'High Gain from Small Investment,' which was corroborated by Respondent 6 as well.

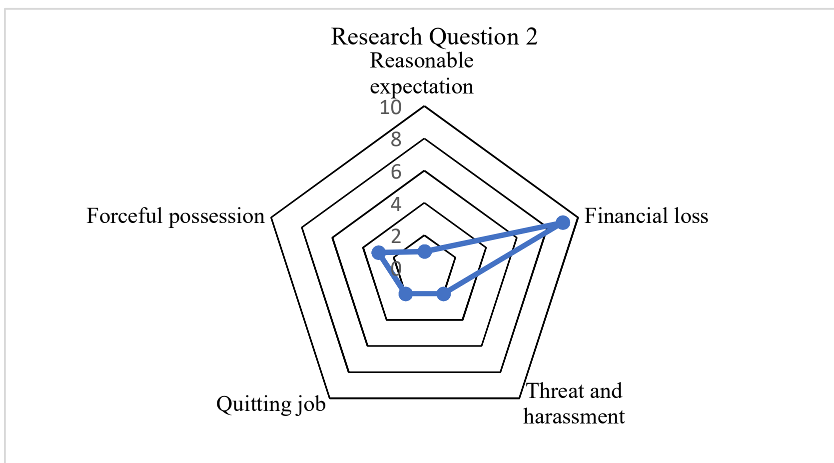


Respondent 3 emphasized that employers use service bonds to reduce the hassle of repeated recruitment. By imposing sanctions, companies can discourage early resignation and maintain workforce stability. This insight was coded as 'Reduce Recruiting Hassle,' though it lacks sufficient empirical indicators for broader generalization.

5.2 As for the second research question:

Respondent 1 reported that the employer withheld the total salary for 1.5 months, as well as the bonus amount. He further explained that this action was intended not only to recover the paid salaries but also to establish a precedent for future cases of employee turnover. Similarly, Respondent 3 stated that a penalty of Tk. 125,000 had been deducted from his provident fund. Both accounts were coded under the theme 'Financial Loss' and were corroborated by a total of nine empirical indicators from respondents 1, 3, 4, 6, and 9.

Respondent 2 noted that he had no choice but to resign from his job, accepting the risk of harassment by the employer. He added that original certificates of many employees were withheld, a tactic often employed by companies to exert pressure on those wishing to leave. These experiences were coded under 'Quitting Job', confirmed by respondent 9, and 'Forceful Possession of Certificates', confirmed by respondents 5 and 7.



Respondent 4 recounted that, although he had not agreed to the compulsory service period stated in the employment bond, he was nevertheless asked to serve for five years under an informal gentlemen's agreement. This was coded as 'Reasonable Expectation', although it lacked supporting empirical indicators. Subsequently, he faced threats of legal action and police detention communicated through phone calls and messages upon joining a new company. He was also asked to serve an additional three months under the pretext that his resignation had not been approved. When questioned, the CEO admitted to intentionally setting a trap for the respondent. These events were coded as 'Threat and Harassment' and were further corroborated by respondent 6. Additionally, the respondent was denied his Eid bonus and clearance, reinforcing the theme of 'Financial Loss'.

5.3 Regarding the third research question:

Respondent 1 indicated that he did not wish to pursue legal action, a sentiment echoed by other participants. This suggests that he was either unaware of his legal rights or sought to avoid the complexities and potential delays associated with litigation. This theme has been coded as 'No Legal Remedy Sought' and is supported by a total of nine empirical indicators across the interviews.

Respondent 2 similarly reported that he refrained from seeking legal redress due to the perceived difficulties involved in the process. Respondent 3 explained that, having breached the contract and left before the stipulated period, he believed pursuing legal action would not be in his best interest and was unlikely to yield a favorable outcome. Respondent 4 noted that, having been threatened with fabricated cases by his previous employer, he anticipated that his current company would not support him in such a legal dispute, which could ultimately result in job loss. Collectively, these accounts underscore a recurring pattern in which employees, constrained by fear, lack of awareness, or practical considerations, refrain from seeking legal remedies.

6. Discussion

The preceding case studies demonstrate that these issues are prevalent within society, and the following discussion will examine them in the context of the relevant legal frameworks and judicial decisions.

6.1 To save organizational interest

An employment bond is often said to be reasonable because it protects the employer's interests. In some cases, an employment bond contains a negative or restrictive covenant, which prohibits an employee from joining a competitor company during the course of employment, and some even after the course of employment.[17] The

[17] Archana Balasubramanian, 'Employment Bonds / Indemnity Bonds: Can One Truly Lock-in Their Key Employees?' (*mondaq.com*, 3 August 2021) <https://www.mondaq.com/india/employee-benefits--

latter scenario was directly in restraint of trade from the viewpoint of the Constitution and Contract Act.[18] In *Jet Airways (I) Ltd vs. Jan Peter Ravi Karnik*[19] and *Lalbhai Dalpatbhai & Co vs. Chittaranjan Chandulal Pandya*,[20] the Indian Supreme Court opined that the employment bond should not lose its character and refrain from taking on the character of a contract in restraint of trade. The main distinction between a restrictive covenant and an employment bond is that the former intends to protect the trade secrets of the organization by imposing post-termination obligations, whereas the latter imposes a financial liability on the employee upon premature termination of his mandatory service period.[21] In a landmark Judgment of *Desiccant Rotors International (P) Ltd. vs. Bappaditya Sarkar*,[22] the Honorable High Court of Delhi ruled that the employee's right to seek employment must take precedence in situations when the company is attempting to defend itself from a competitor.

However, in the name of safeguarding an organization's interests, employment bonds might limit an employee's capacity to seek better opportunities or develop in their careers, potentially leading to job dissatisfaction and decreased morale. It can also potentially lead to decreased loyalty and commitment. On top of that, employees' interests must not be disregarded, and fostering an environment conducive to an employer's well-being is something that eventually protects an organization's interests.

6.2 High gain from small investment

Employment bonds are most commonly used in entry-level positions that are typically associated with lower pay scales and may not offer significant financial incentives or benefits. These entry-level workers often switch jobs when better, higher-paying

compensation/1098574/employment-bonds--indemnity-bonds-can-one-truly-lock-in-their-key-employees> accessed 25 September 2023.

[18] *Dr. S. Gobu vs. State of Tamil Nadu* [2010] SCC Mad 3389.

[19] [2000] 4 Bom CR 487.

[20] [1966] AIR Guj 189.

[21] Abhinav Benjamin, 'The Legality of Employment Bond Contracts' (*Legal Service India*) <https://www.legalserviceindia.com/legal/article-181-the-legality-of-employment-bond-contracts.html> accessed 24 September 2023.

[22] I.A. No.5455/2008.

possibilities emerge. Since this is a usual trend and employers are also aware of this, they do not want to invest heavily in employee training. Furthermore, they ask employees to work overtime yet do not pay them for it. By doing so, employers aim to maximize their benefits with a minimal investment. And when employees want to switch jobs, the employers want to make up for their small investment loss by charging a large penalty. Moreover, the company is not at liberty to arbitrarily alter the terms of the contract independently to protect its interests. Even if alterations are made to the service rules, the employee is entitled to the benefits outlined in the Service Rules that were in effect at the time of his appointment, and not those of any subsequent amendments.[23]

6.3 Reduce recruiting hassle

It is often argued that the employment bond's mandatory service requirement is meant to ease the burden of recruiting. From a surface-level perspective, it would seem that this claim is acceptable given that employers seek to reduce the costs associated with recruiting, onboarding, and training new employees. But first, according to labour law, such a mandatory period is not allowed, and when an employee is offered a more favourable job offer than his current one, he is expected to accept it. By signing an employment bond, an employee does not enter into a bond of servitude, and the employee holds the right to resign at any moment, even if he has promised to serve the employer for an agreed-upon period of time.[24] In *Shree Gopal Paper Mills Ltd. vs. Surendra K Ganeshdas Malhotra*,[25] an agreement that required an employee to work for 20 years was deemed oppressive and one-sided. Furthermore, a continuous duty for more than three years is not covered by the Specific Relief Act.

In terms of lowering hiring costs, it might be argued that the employee has to pay a considerable sum of application fee while applying for a position. As a result, the aforementioned claim is vague. Finally, in terms of employee training, it might be argued

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[23] *Pachimanchol Gas Company Limited vs. Md. Nuruzzaman and others* [2015] 3 SCOB (AD) 27.

[24] *Central Inland Water Transport Corporation v. Brojonath Ganguly* [1986] IILJ 171 SC.

[25] [1962] AIR Cal. 61.

that the whole compensation money is claimed regardless of whether or not the employee received any training. Even if the individual has received training, the compensation money is far in excess of the loss. On top of that, in cases where labour laws specify resignation procedures, including giving prior notice or offering equivalent pay of the notice period in lieu of notice, implementing a bond that enforces mandatory service and imposes high penalties for non-compliance lacks a foundation of support.

6.4 Financial loss

All of the respondents suffered financial loss while switching jobs. One of the respondents was deprived of his provident fund, and the penalty was deducted from it, which is an obvious infraction of section 29 of the Labour Act. There is no denying that the employee will incur a financial loss if he decides not to give advance notice or intends to quit instantly if there is no employment bond. And if there is one, it is reasonable to claim the expenses that were spent on him. In *Sicpa India Limited vs. Shri Manas Pratim Deb*, instead of the required three years as specified by the bond, the employee quit his job after serving only two years.[26] The Court took into account the employer's genuine loss. The Court awarded damages of Rs 22,532 instead of the stipulated amount of Rs 2,00,000. It implies that the mere existence of a legal injury does not automatically entitle the employer to the whole amount of the contract's prescribed damages.[27]

In another *Satyam Computer Services Limited vs. Ladella Ravichander*,[28] the defendant was an employee who unexpectedly departed the company and was required to pay liquidated damages of Rs. 2 lakhs, as well as stipend costs and additional expenditures made by the company for the defendant, under the provisions of the

[26] [2011] SCC Del 4805; Manupatra citation: MANU/DE/6554/2011.

[27] Apoorv Madan, 'Validity of Employment Bonds in India' (*IndiaCorpLaw*, 29 July 2018), avalible at https://indiacorplaw.in/2018/07/validity-employment-bonds-india.html, accessed on 24 September 2023.

[28] [2011] AIR CC 2827: [2011] SCC AP 76; Manupatra citation: MANU/AP/0416/2011.

employment bond.[29] The Andhra Pradesh High Court held that the compensation imposed by the employer was too high when compared to the costs faced in the recruitment procedure, training the employee, hiring a replacement, etc.[30] The Court confirmed the employment bond's validity but decreased the exorbitant compensation payable under the contractual agreements to a reasonable level. The Honorable High Court of Calcutta acknowledged that a bond might be regarded as legal if it is done reasonably and fairly.[31]

However, in the *Toshnial Brothers (Pvt) Ltd vs. E Eswarprasad & Others*, an employee recruited as a sales engineer violated the agreement when he left the plaintiff's job after only 14 months, as opposed to the three-year contract duration.[32] The Madras High Court decided that the existence of a legal injury arising as a result of a breach is a prerequisite for claiming liquidated damages under section 74 of the Indian Contract Act, 1872. In simple terms, the employer must demonstrate that the breach of the obligation to service for a minimum amount of time automatically caused a legal injury. Similarly, the Indian Supreme Court held in Fateh Chand vs. Balkishan Das that the liquidated damages cannot be compensated in the form of a penalty, and such provisions are null and void.[33] The employer must determine the actual loss he has experienced as a result of the employee's violation and provide supporting documentation.

6.5 Quitting job

When better job opportunities come, employees are expected to switch jobs. Most often, employees refrain from providing release letters, compelling them to fulfil the mandatory service period.[34] As

[29] Akhila, 'Legality of Employment Bonds in India' (*Medium*, 5 August 2021) https://medium.com/@akhila.subramanya/legality-of-employment-bonds-in-india-1e3dd5856c13, accessed on 24 September 2023.

[30] *Supra note* 21.

[31] *Subhir Ghosh vs. Indian Iron and Steel Company* [1977] IILLJ Cal 120.

[32] [1997] LLR 500.

[33] [1963] AIR 1405.

[34] Saida Sharmin Esha, 'Legal Status of Employment Bonds' *The Dhaka Tribune* (11 February 2015) *https://www.dhakatribune.com/bangladesh/laws-rights/94042/legal-status-of-employment-bonds,* accessed on 25 September 2023.

a result, there is concern about joining the new job because employers require employees to provide release letters of prior employment. Employees frequently omit details about former employment to dispel this concern. Additionally, certain companies issue termination letters in an effort to harm the resigning employee's professional record and hinder their professional aspirations. But the Labour Act provides that if the employee remains absent for a number of days and after issuance of notice, does not join the service or defend himself, he will be considered to have resigned from the service as of the day of absence. The employer complies with these clauses to the extent that it serves its own interests. Even many companies do not have their own service rules, and those that do are either not authorized by the Chief Inspector or are less favourable than the Labour Act. However, in *Brigadier Chowdhury Khalequzzaman vs. Sheikh Shahabuddin*, it was held that the provision of payment of gratuity by BRTC in lieu of compensation is not less favourable and is not void as it does not violate any provision of law.[35] Due to these overlapping interests, determined individuals risk harassment to resign from their jobs, while others, in the worst-case situation, decide to continue carrying the burden.

6.6 Forceful possession of certificates

Employees often have to give their original certificates to their employers, who then refuse to return them when the former decides to switch jobs. This is against the Penal Code and may be considered a criminal breach of trust. Certificates can be taken just for verification purposes; they are not meant to be kept indefinitely. A similar case was heard at the Orissa High Court, in which schools and institutions refused to return original documents given during admissions after being admitted to a better-placed school.[36] The court ruled that it was against the law to keep students' original certificates and not give them back, finding it to be a flagrant violation of the rule of law. However, Justices S Panda and S K

[35] [1990] 42 DLR 293.

[36] Dhananjay Mahapatra, 'Certificates Valuable Assets of Students, Institutions Can't Refuse to Return: HC' *The Times of India* (New Delhi, 26 September 2020) *https://timesofindia.indiatimes.com/india/original-certs-valuable-assets-of-students-illegal-to-retain-them-hc/articleshow/78327930.cms,* accessed on 24 September 2023.

Panigrahi made an interesting point that the institution is obligated to release the original certificates entrusted at the time of admission unless there is a specific undertaking or bond of compulsory employment at the stated institute.

In another *C. Shanthi vs. Vel Tech High Tech Dr Rangarajan Dr Sakunthala Engineering College, Chennai* case, the petitioner was refused her original certificates when she was terminated and asked to submit her resignation letter. The college claimed that she owed damages for leaving service without giving notice and that they would only release the certificates if she agreed to pay the damages. The court ordered the restoration of the certificates without jeopardizing the respondent's right to seek legal redress for damages.

6.7 Reasonable expectation

In certain instances, instead of entering into an employment bond, the employer may rely on an informal understanding, often referred to as a gentleman's agreement. Under this arrangement, the employer expects that, given their investment in the employee, the latter will commit to serving for a specified duration. A gentleman's agreement is an agreement which is not an agreement, made between two persons, neither of whom is a gentleman, whereby each expects the other to be strictly bound without himself being bound at all.[37] A contract does not have to be in writing to be enforceable by law. From a legal perspective, a gentleman's agreement is an oral contract that may be legally enforceable provided certain conditions are met, such as offer, acceptance, intent to form legal relations, and consideration.[38] If one of the aforementioned conditions is present, there will be no legally valid contract.[39] In this particular scenario, these agreements lack legal enforceability due to the absence of a formal offer from the employer and corresponding acceptance from the employee.

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[37] *Bloom v. Kinder* [1958] T.R. 91.

[38] Oishika Banerji, 'All You Need to Know about a Gentleman's Agreement' (*iPleaders*, 9 February 2022) <https://blog.ipleaders.in/all-you-need-to-know-about-a-gentlemans-agreement/> accessed 24 September 2023.

[39] Andrea Calcagno, 'Gentlemen's Agreements' (*WallStreetMojo*, 6 July 2023) <https://www.wallstreetmojo.com/gentlemans-agreement/> accessed 24 September 2023.

Instead, the employer simply expects that the employee will voluntarily commit to a specific period of service. Furthermore, as an indemnification contract, a service bond must be executed with a non-judicial stamp of a fixed amount.

6.8 Threat and harassment

When an employee wishes to switch to a better job opportunity, it perhaps stimulates the employer's ego and so threatens and harasses the employee rather than taking legal redress based on the bond. Additionally, where there is a gentleman's agreement, the employer is not entitled to a legal remedy because there was never an offer on his end nor any corresponding acceptance. Besides, when a bond is in place, the bond value is at times exorbitant, and it is apparent that the employer did not make any significant investment in the employee's training to justify such a high bond value. In certain situations, such bonds are presented to the employee for signature shortly after he begins work, leaving him with little choice but to sign them. Because the employee has limited bargaining power and the ability at that time to thoroughly evaluate the terms and potential implications. As a result, even if the employee signs the bond, the consent offered is not truly free and implies undue influence over it from the standpoint of the Contract Act. The relationship between the two is such that one of the parties is in a superior position to dominate the will of the other, and that relationship is used to gain an unfair advantage.[40] And the relative bargaining power of the contractors becomes a relevant consideration in such a case, within the modern law of contract.[41] Despite being aware of these realities, they occasionally also pursue legal action. Due to these reasons, the company's sole approach is to threaten and harass the employee, putting his better employment opportunity elsewhere constantly in jeopardy. Such threats fall within the scope of criminal intimidation of the Penal Code.[42] Although such bonds may be reasonable in some circumstances, it is not appropriate to use illegal means to coerce the employee.

[40] Muhammad Ekramul Haque, *Law of Contract* (3rd edn, Law Lyceum 2016).

[41] Michael P Furmston and Neil Andrews, *The Law of Contract* (Sixth edition, LexisNexis Butterworths 2017).

[42] Penal Code, sec. 503.

6.9 No legal remedy sought

The case studies show that none of the respondents were willing to go to court, a decision influenced by several factors. A lack of knowledge about their legal rights and remedies often led them to avoid legal action altogether. Financial considerations played a role as well, with many fearing the high costs associated with litigation. Time constraints stemming from work commitments, family responsibilities, or the lengthy nature of legal proceedings made engaging in a legal battle impractical for most of them. Additionally, the fear of an unfavourable outcome, especially when respondents believed their own actions might weaken their case, deterred them from pursuing legal remedies. Many also sought to avoid complications, such as issues with obtaining clearance from former employers, which could hinder their future job prospects. Concerns about potential negative personal consequences, like being shunned or facing discrimination in promotions, further discouraged legal action. In some cases, respondents simply accepted their situation and chose to move on rather than engage in a lengthy and uncertain legal process.

While there isn't a specific legal entitlement regarding employment bonds, the court does not prohibit pursuing legal recourse in such matters. Since it is governed by multiple laws, the outcome of such legal action also depends on a number of factors. These factors make it uncertain to get favourable outcomes, which often leads to the non-pursuit of enforcement for these implicit rights.

7. Recommendations and Concluding Remarks

Employees lack a clear right to protection from harassment related to employment bonds, which is governed by a number of laws and other factors. Therefore, it would be imperative to develop explicit statutory provisions comprising a thorough evaluation and potential reform of current laws in order to ensure that they offer employees dealing with such situations definitive protection and redress mechanisms. This reform includes both the structural and managerial aspects of the companies, not just the legal framework.

Employer companies often have their own service rules, and in accordance with those rules, they often provide less favourable rights than the Labour Act. In addition, the Labour Act stipulates that the Chief Inspector must approve these service rules, which may not always be the case. Therefore, it is advised that regulatory bodies evaluate employer companies' service rules on a regular basis to ensure compliance with the standards established in the Labour Act. This will make it easier to spot and address any inconsistencies between the company's regulations and the legal rights protected by the Labour Act.

We were unable to find any Bangladeshi judicial decisions while studying the legal status of employment bonds and why employees do not pursue legal action. Our neighbouring country, India, however, has various court rulings in this area. Therefore, it is recommended that the judiciary be proactive in setting key precedents regarding the legal standing of the employment bond and the extent to which the terms and conditions outlined in it shall be enforceable.

It is true to some extent that employment bonds safeguard the interests of the employers. However, it cannot override the rights and interests of its employees because it ultimately serves the employer's best interests to promote a more equitable, considerate, and productive workplace. Therefore, it is essential for the sake of all parties involved to strike a balance between organizational interests and employee well-being.

When drafting an employment contract, the employer must refrain from including unrealistic terms and conditions. The terms and conditions imposed on the employee under the contract must be reasonable and fair. The bond's duration should be reasonable, with compensation not exceeding the expenses incurred for the employee's training or grooming. A confidentiality clause may safeguard the company's trade secret if the employee departs, and any legal action taken by the company should be supported by adequate evidence of training and maintenance costs.[43]

[43] *Supra note* 2.