

A Critical Legal Approach to Street Children

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Introduction

Street Children commonly known as 'Tokai' survive on the streets by recycling rubbish. While we lack any well-organized waste recycling process, these human recyclers are considered rubbish by some. The living condition of almost 1.5 million children in Bangladesh is extraordinarily difficult.¹ This number of victims will reach to 1.56 million in 2024. Their rights under the Constitution of Bangladesh and United Nations Convention on the Rights of the Child (UNCRC), 1989 are being consistently violated. They are sufferers of various types of vulnerability and exploitation, ranging from state violence (arrest, confinement, police torture) to societal violence (child marriage, trafficking, sexual abuse, dowry, corporal punishment at home and schools, and abuse and exploitation by employers).² Often their legal identity seems to be blurred and quite foggy. The backlogs in ensuring their legal rights are neither being identified nor there has been any noteworthy attempt to remove those. So, the question generally arises in every prudent human mind, what is the State doing to ensure their legal rights? Is State fulfilling its responsibilities and legal obligations sincerely towards those homeless street children? For a long time in reply to this question a deep silence perched in.

Denial of Human Rights of the Street Children

Fundamental rights are human rights which are protected by law as the State bears concrete obligation to give these rights preferential treatments. Part III of the Bangladesh constitution enlisted and guaranteed 18 fundamental human rights. As the street children are by birth citizen of Bangladesh these rights are absolute for them and are subject to no restriction.

Firstly, article 15 states that the state shall provide basic necessities of life, including food, clothing, shelter, education and medical care to its citizens.³ Again there are provisions for free and compulsory education, equality of opportunity to be ensured.⁴ Astonishingly, the actual scenario says something far more different. About 13% of the children, mainly dwelling in the streets of Bangladesh are involved in child labors and they are deprived from education and other child rights.⁵ About 22% of the children in Bangladesh are illiterate, 30% know only how to signature their names, 36% of the children have primary education and

¹<Report from Bangladesh Institution of Development Studies (BIDS) Project. 2015><http://www.bids.org.bd>, last accessed 29th April 2018

²<National Report of Bangladesh on 'Global Study on Child Poverty and Disparities'; UNICEF, 2009>https://www.unicef.org/sitan/files/Bangladesh_Child_Poverty_Study_2009, last accessed 28th April, 2018

³Article 15 of the Constitution of Bangladesh, Provision of basic necessities

⁴ Ibid, Article 19, Equality of Opportunity, Art. 17, Free and Compulsory Education

⁵Mohajan, H.K. (2012a). Lack of Consciousness of Child Rights in Bangladesh, Lambert Academic Publishing, Germany. (<https://mp.ra.ub.uni-muenchen.de/58424/>)

only 10% have secondary education.⁶ In defense to the denial of these rights state takes the shelter of unenforceability of fundamental principles of state policy.⁷ Everything that puts a positive obligation on the state loses the enforceability of law. Consequently, street children remain on the street forever without the hope of living a peaceful life.

Secondly, as per Article 28(1) of Constitution no discrimination can be made on the ground of religion, race, caste, sex and place of Birth. ‘Street Children’- discrimination starts here with the name they are being called. In the absence of provisions of Article 28, the objection of what is known as reverse discrimination would be raised whenever a beneficial legislation is made in favour of women, children and the backward section of citizens. But the state hasn’t taken any such affirmative actions in favor of the street children.⁸

Thirdly, Article 33⁹ talks about safeguard measures in case of arrest and detention. But often it’s been seen that the street children are oppressed and abused by the police asking for bribes. Failing so, they end up taking away their valuables and implicate them in false charges.¹⁰ In 2003 more than 12,000 children under 18 were imprisoned in Bangladesh.¹¹ Some of them were accused of crimes; some were vagabonds, while others were simply reported as lost.¹² So it’s clear that the endless provisions of Law don’t apply when it comes to the helpless street children. It is presumed that everybody knows the law. To be frank, the actual presumption should stand as everybody knows their rights and the process to have those rights ensured. The most significant feature of the fundamental rights is these are enforceable by law. But the problem here is access to justice of street people is a thing that will happen twelfth of never.

Fourthly, as per Article 27 of the Constitution every citizen is equal before law and will get equal protection of law. ‘Equality’- a broad concept, even the narrowest portion of which is unseen when it comes to the case of street children. Inequality kills.¹³ Bangladesh ratified different international treaties and conventions like Convention on the Rights of the child, 1989 and so on. But no legal framework has been made for children working in informal sectors and domestic labor such as street vending.

⁶Mohajan, H.K. (2012b). Human Trafficking in Asia: A Heinous Crime against Humanities, International Journal of Cross-Cultural Studies, 2(1): 29–41, (https://mpra.ub.uni-muenchen.de/50852/1/MPRA_paper_50852.pdf), last accessed 27th April, 2018

⁷ Supra note 3, Article 8(2)

⁸Islam Mahmudul, Constitutional Law of Bangladesh, second edition, para 2.10, p. 94

⁹Article 33 of the Bangladesh Constitution, Safeguards as to arrest and detention.

¹⁰Protection of Children Living on the Streets.UNICEF Bangladesh https://www.unicef.org/bangladesh/Protection_of_Children_Living_on_the_Streets.pdf, last accessed 27th April, 2018

¹¹Journal of Social Welfare and Human Rights, vol. 2(1), March 2014, Child Rights in Bangladesh Haradhan Kumar Mohajan, 208 p.(jswahr.com/journals/jswahr/Vol_2_No_1_March_2014/12.pdf), last accessed 27th April, 2018

¹²ibid

¹³The annual State of the World’s Children Report, 28th June, 2016, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf, last accessed 28th April, 2018

Statutory Analysis of the Present Condition of the Street Children

The Children's Act, 2013 has been enacted repealing the Act of 1974. This new legislation has been enacted for the betterment of its estimated 70 million children.¹⁴ The purpose for enacting this legislation, officially known as Shishu Ain, 2013 was to implement the United Nations Convention on the Rights of the Children, 1989 which is clearly stated in the preamble of this act. This law has come up with some far better provisions for the advancement of the backward section of children.

According to section 4 of this Act, every person below 18 years are defined as child. Section 16 of this Act deals with the establishment of Children's court and its functions. There shall be at least one Court in every district headquarter and in every metropolitan area named as Children's Court. Also, it is decided that Court of Additional Sessions judge in a district will work as the Children's Court. Failing so, the Court of District and Sessions Judge shall work as Children's Court.

Again, Section 6 of this law deals with the appointment, responsibilities and duties of a probation officer in a broad and disciplined manner. In every district, Upazilla or Metropolitan area there shall be at least one or more probation officers. When a child is brought to the police station in conflict with the law the probation officer must find out why he's brought there, he has the duty to meet the child, give assurance of legal assistance and communicating with the police to arrange for his bail. He has further roles to play in the Children's Court during the trial as well as at the Child Development Center (ACDC) or at Certified Institute.¹⁵

There is provision for establishment of National, District and Upazilla Child welfare Boards. This part has been so much emphasized that a whole separate chapter is given for this part. The provisions for legal aid, victim witness protection, exploitation of Children by adult criminals is considered in this Act from the judgement of one of the leading cases *The State vs. Secretary, Ministry of Law, Justice and Parliamentary affairs*.¹⁶ The chaos and disorders of the old law has been prevented relying on the judgement of *The State v. Md. Roushan Mondal Case*.¹⁷ Provisions for establishing Child Affairs Desk is also present. No doubt this piece of legislation is a milestone for ensuring rights of the Children. But the actual fact is there is absence of proper implementation of this law. Unsurprisingly, it seems that enactment of another legislation is the hard-core need of time for implementation of the current legislation. The Government should take strong measures for effective implementation of the legal provisions.

¹⁴The Children Act 2013: A commentary By Justice Imman Ali, <https://www.blast.org.bd/content/publications/The-Children-Act%202013.pdf>, last accessed 28th April, 2018

¹⁵ Ibid.

¹⁶ Ali, Justice M.Imman, Custody of Children, <https://justiceimmanali.wordpress.com/2016/05/10/custody-of-children>, last accessed 29th April, 2018

¹⁷ Ibid

Recommendations: The Government must be careful about ensuring the rights of the street children. The realization of children's rights must be taken in the legal obligation of the government. In this regard the following recommendations can be made:

1. Accelerating the food for education program at a large scale, improve the health services for children in areas where it is known that childworkers are living and working.
2. Taking measures to improve basic education in order to reduce child labor.
3. Proper implementation of the existing laws. In this regard the following steps should be taken immediately:¹⁸
4. The appointment of the CAPOs in Police Station
5. Establishing sufficient number of safe homes and certified Institutions.
6. Setting up of Children's Court.
7. Some procedural rules should be framed to ensure implementation of the Act.
8. Special emphasize should be given on Diversion, family conferencing and ADR.
9. Professionals should be trained to have a smooth working child judicial system.
10. Taking the contexts of poor families into account by creating a non-formaleducation system parallel to primary education,
11. Creating awareness among parents about the consequences of risky child labor, provide allowances for the poor families.
12. Broadening the scope of projects like PCAR (Protection of Children At Risk)
13. Creating social safety net and budget allocation for the poor children.
14. Ensuring basic education for hard to reach urban working children.
15. Creating opportunities for the street children by quota reservation under article 28.¹⁹

Concluding Remarks

Today's children are the future of tomorrow. Development of a country can't be imagined leaving a backward section like street children in darkness. The street children are also a part of nation's future. For the lack of appropriate care and gaps in ensuring their basic needs, the street children are suffering a great deal. Therefore, the authorities should do all they can to ensure their rights. However, it can be said that the Children Act, 2013 will cover lacunas of earlier Children Act, 1974. Now we need to create proper awareness and execution about the new Act. We hope, a child-friendly justice system by the proper implementation of the Children Act 2013 would be started as soon as possible in Bangladesh. A positive and strong approach must be taken by all concerned to ensure that the children of this country achieve fulfilment of their rights. The time has come. Let's remove this fear of street children.

"I know I'll die here on the street
If no-one will help me
But I live a different life
That they don't want to see."²⁰

¹⁸<Justice Imman Ali Speaks on Child Marriage in Bangladesh><http://www.lawschool.cornell.edu/spotlights/Justice-Imman-Ali-Speaks-on-Child-Marriage-in-Bangladesh.cfm>, last accessed 28th April, 2018

¹⁹ Supra note. 7

²⁰<https://allpoetry.com/poem/3821906-Street-Child-by-limpy>