

## Legal Terrain of Child Labor in Bangladesh: A Socio-Legal Appraisal

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### Abstract

*This paper delves deep into the Legal framework pertaining to child workers in Bangladesh. In doing so, it tries to conceptualize the topic from the broader socio-economic perspective prevalent in the country. In the first place, the paper identifies common socio-economic forces and then covers the legal provisions on child labor. While covering the legal provisions, it focuses on the anomalies and inconsistencies with other international and national instruments that the Labor Act, 2006 comes with. The paper does not advocate for a complete ban on Child Labor, and instead, balancing between the arguments for and against child labor, it proposes for regulated child labor, ensuring the rights of the children under national and international instruments and safety at the workplace. After doing away with that, it comes up with judicial development as happened in the case of *Ain-O-Salish Kendra vs Bangladesh* case and shows how the judgment syncs with the author presented view. In the end, echoing with the judgment, the paper suggests some policy recommendations and legal amendments.*

### 1. Introduction

Today's children are the driving force behind tomorrow's nation. But what if today did not provide them with chances of forming a better tomorrow? what if today came with hurdles? For many children across the world, today comes with hurdles, and tomorrow with even worse conditions. Many become the victim of poverty, other situations beyond their control. Their Childhood days end prematurely, tomorrow waits with harder situations as they lack education, proper nutrition, and bringing up. In developing countries like ours where a big portion of the population is child, childhood ends in workshops or factories. The ILO data<sup>1</sup> provides that on any given day in the year 2016, 152 million children in this world were in Child Labor, of which 72 million were in hazardous work. To the surprise of many, 48% of them were between 5-11 years old, followed by 28% between 12-14 and 24% between 15-17<sup>2</sup>. Africa topped the list with the highest number of child labor, America and Asia being second and third respectively<sup>3</sup>. These numbers are enough to describe it as a global problem and justify why should we act promptly to solve it.

Bangladesh is no exception to this statistical reality. There has been debate against and for child labor. No doubt, to resolve such a problem, the approach towards the social problem of child labor requires a balancing approach of these two, albeit, at the same time protecting the interest of the children. To this end, we need policy and legal reformations along with their proper implementations. This paper shall analyze the laws and policies of Bangladesh on child labor,

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<sup>1</sup> International Labour Office, *Global estimates of child labour: Results and trends, 2012-2016 (2017)* < [https://www.ilo.org/wcmsp5/groups/public/---dgreports/--dcomm/documents/publication/wcms\\_575499.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/--dcomm/documents/publication/wcms_575499.pdf) > accessed 8 January 2021.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

while discussing their socio-economic impact at the same time, and then assess the situation with the help of Judicial development.

## 2. Defining Child Labor

Before going to any discussion on child labor, the term 'child' should be defined first. Convention on the Rights of the Child (CRC) defines a child as anybody below the age of eighteen<sup>4</sup>. Shishu Ain, 2013<sup>5</sup>, as well as Majority Act 1875<sup>6</sup> conforms with such definition. For labor law, Bangladesh Labor Act, 2006 (hereinafter Act) defines a child as a person who has not completed 14<sup>th</sup> years of his age<sup>7</sup>. The act further defines children within the age group of 14-18 as an adolescent<sup>8</sup>. Such definition matches with the spirit of the Minimum Age Convention, 1973.

However, not all work children are employed to are classified as child labor to be targeted for elimination. When children or adolescents are engaged with work that does not interfere with their development or schooling, it is generally regarded as something positive. In view of the ILO, "'Child Labor' refers to the exploitation of children through any form of work that deprives children of their childhood, interferes with their ability to attend regular school, and is mentally, physically, socially, or morally harmful"<sup>9</sup>. UNICEF and WHO also come up with similar definitions.

## 3. Existing Situation in Bangladesh

Bangladesh, which was once mostly dependent on agriculture for its economic activities, has seen a drastic change in the last few years as RMG and other industrial sectors are speedily replacing agriculture as the major contributor to the economy<sup>10</sup>. However, the plight of child labor remained almost the same. According to the National Child Labor Survey report, published in 2015, approximately 1.2 million children in Bangladesh are working in the worst forms of child labor<sup>11</sup>. Though current economic sector basis data on child labor is not possible to get, the old data suggest child labor is predominantly common in the agriculture sector and almost 1.3 million children aged between 5-17 work in the hazardous working environment<sup>12</sup>.

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<sup>4</sup> Article 1 of the UN Convention on the Rights of Child, 1989.

<sup>5</sup> Section 4 of the Shishu Ain, 2013.

<sup>6</sup> Section 3 of the Majority Act, 1875.

<sup>7</sup> S. 2(36) of the Act.

<sup>8</sup> *Id.* S.2(8)

<sup>9</sup> International labour organisation, 'What is child labour' (ILO, 2012) <<https://www.ilo.org/ipecc/facts/lang-en/index.htm>> accessed 8 January 2021

<sup>10</sup> Trading economics, 'Bangladesh Gross Fixed Capital Formation 2011-2020 Data | 2021-2023 Forecast' (Trading Economics, 2019) <<https://tradingeconomics.com/bangladesh/gross-fixed-capital-formation>> accessed 9 January 2021.

<sup>11</sup> Ramisa rob, 'World Day Against Child Labour: Confronting our complicity' (The Daily Star, June 12, 2019) <<https://www.thedailystar.net/opinion/news/world-day-against-child-labour-confronting-ourcomplicity>> accessed 9 January 2021

<sup>12</sup> Unicef, 'Child labour in Bangladesh: Key Statistics ' (Web Archive, 2008)

<[https://web.archive.org/web/20111122204427/http://www.unicef.org/bangladesh/Child\\_labour.pdf](https://web.archive.org/web/20111122204427/http://www.unicef.org/bangladesh/Child_labour.pdf)> accessed 9 January 2021

A 2013's study<sup>13</sup> conducted by Bangladesh Shishu Adhikar Forum finds that child domestic workers work for unnaturally long hours, and a study on the situation of child domestic workers in Dhaka city in 2010 showed that almost 73 percent of child domestic workers were physically abused and 17 percent sexually abused. These data show the situation is very gloomy, and the rights of the child workers even under the existing framework are not properly implemented.

#### **4. Socio-Economic Forces as Causes of Child Labor**

Before going to any conclusion on any discussion on child labor in Bangladesh, it is pertinent that its socio-economic situation should be discussed first. As we all know, socio-economic conditions play a pivotal role in determining the causes, impacts, and solutions of child labor in a given country.

Socio-economic forces come with immense power to impact a country's overall child labor situation. Poverty, for example, is one of the main causes behind the prevalent child labor phenomenon. In many cases, poverty and poor institutions are major driving forces behind the prevalence of child labor worldwide<sup>14</sup>. The World Bank reports<sup>15</sup> that the labor force participation rate of children aged between 10 to 14 years is the highest in countries with a per capita income of \$ 500 or less (at 1987 prices). As a result, some economic events or policies can have hard effects on child labor. Bangladesh is no exception to that. As a developing country, it is steeping more toward having a balanced economy, however, in the way it is compromising the childhood of future generations as well.

Child labor supply is related not only to the poverty but also to the unavailability and quality of schools and opportunities in the labor market. Households are more likely to rely on child labor if parents perceive the returns to education as low, schools are not available nearby, or education is not affordable<sup>16</sup>. Another depressing side of child labor in Bangladesh is that some children are from their villages into towns and cities and often trafficked abroad where girls are compelled to engage in prostitution and pornography while boys get involved in many anti-social and illicit activities<sup>17</sup>- which indicates that interstate migration is one of the reasons behind the increase in the child labor.

Other socio-economic factors behind child labor include migration of refugees, example can be drawn from the Rohingya influx in Bangladesh as the NGOs and Human rights activists fear that a significant portion of migratory children is being forced into child labor<sup>18</sup>. Moreover, as

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<sup>13</sup> Bsaf, A Study on Child Abuse & Exploitation in Bangladesh (Bangladesh Shishu Adhikar Forum (BSAF) 2013)

<sup>14</sup> Eric v edmonds and Nina pavcnik, 'Child Labor in the Global Economy' [2005] 25(1) Journal of Economic Perspectives 199-220

<sup>15</sup> P fallon and Z tzannatos, Child Labor: Issues and Directions for the World Bank Human Development Network— Social Protection (World Bank 1998).

<sup>16</sup> Ana c dammert, Jacobus de hoop, Eric mvukiyeye, Furio c rosati, 'Effects of Public Policy on Child Labor Current Knowledge, Gaps, and Implications for Program Design' (World Bank Group, 2017) <<http://documents1.worldbank.org/curated/en/108841488913017526/pdf/WPS7999.pdf>> accessed 9 January 2021.

<sup>17</sup> Ministry of Labour and Employment Government of the People's Republic of Bangladesh, National Child Labour Elimination Policy 2010 (March 2010) <<https://mole.portal.gov.bd/>> accessed 9 January 2021.

<sup>18</sup> Leif coorlim , 'Stolen son: The child traffickers preying on the Rohingya' (CNN, August 31, 2019) <<https://edition.cnn.com/2019/08/31/asia/stolen-son-rohingya-coxs-bazar-intl/index.html>> accessed 10 January 2021

UNICEF predicts, there may be an influx in child labor due to socio-economic changes made after the advent of Covid-19.

### **5. Child labor's Impact on Socio-economic condition**

It should also be taken into account that child labor has a positive impact on the economy. At least for the time being, the availability of cheap labor is one of the factors that make Bangladesh one of the most rapidly growing economies. However, the prevalent child labor situation may pose a great threat to the sustainability of the economy, for Child labor reinforces the intergenerational cycle of poverty, undermines national economies, and impedes achieving progress towards the Sustainable Development Goals (SDGs)<sup>19</sup>.

### **6. Legal terrain of Child Labor under Bangladeshi Laws**

The Legal terrains of child labor in Bangladesh are regulated by the Bangladesh Labor Act, 2006 and Bangladesh Labor Rules, 2015. Moreover, a policy guideline named Child Labor Elimination Policy, 2012 works as the policy framework to regulate child labor and protect the children at the same time. These laws and policies modulate the minimum age of the child laborer, their working hours and holidays, the type of works they are allowed to be employed in, and the penalty and punishment procedure for any breach of such provisions.

#### ***Setting the Age Group of Child Laborers***

Concerning the 'Child Labor', the Minimum age Convention of 1973 sets the minimum age for labor at 15<sup>20</sup>. However, it relaxes such limits for members whose economy and educational facilities are insufficiently developed to 14 under article 2(4) of the Convention. It then makes two classes out of children aged between 13-18, one group within the age between 13-15 years, and the other 16-18 years<sup>21</sup>. It differentiates two classes with the effect that in case of the latter group, aged between 16-18, national legislation may authorize to assign them with work which is likely to jeopardize the health, safety, or morals of young persons; Provided that the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity<sup>22</sup>. However, the first group aged between 13-15 could not be assigned for similar working conditions, and persons above the age of 18 are at their whim to choose their work.

Although Bangladesh has not ratified the convention, this aforementioned division was followed by Labour Code of 2006. It termed a person below 14 as a child worker<sup>23</sup>, and like the Convention, it prohibits the employment of persons belonging to this age group<sup>24</sup>. Adolescent workers, aged between 14-18 years of age can however be employed provided certain conditions are fulfilled<sup>25</sup>. It can be understood that considering the developing nature of the economy, Bangladesh has chosen not to completely follow the convention as the Act of 2006 allows certain exceptions, permitting children aged 12 to 13 to perform light work, but it

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<sup>19</sup> UNICEF, 'Child protection from violation, exploitation and abuses' (3 September 2020) <[www.unicef.org/protection/57929\\_child\\_labour.html](http://www.unicef.org/protection/57929_child_labour.html)> accessed 10 January 2021.

<sup>20</sup> Article 2(3) of the Minimum Age Convention, 1973.

<sup>21</sup> *Id.*, Article 3(3).

<sup>22</sup> *Id.*

<sup>23</sup> The Bangladesh Labour Act, 2006, Section 2 (Lxiii)

<sup>24</sup> *Id.* Sections 2 ((viii) and 34.

<sup>25</sup> *Id.*

restricts the kinds of work they can be employed for<sup>26</sup>. Bangladesh allowing Adolescents to work under certain circumstances renders its ground reality backed with the socio-economic need of availability of laborers. For a nation topping the list of countries with the lowest median age, it is a social reality that Bangladesh cannot circumvent.

### ***Working Hours and Holidays***

No adolescent worker is allowed to work in a factory or mine for more than 5 hours a day and 30 hours a week<sup>27</sup>. Consolidating overtime hours, it reaches 36 and 48 respectively for adolescent mine workers and adolescent workers working in any other establishment. However, the provisions relating to weekly holidays apply to them as they apply to an adult worker<sup>28</sup>. On the other hand, the child workers (aged between 12 to 13) can be employed on the condition that the hours of work of such child, where he is school going, shall be so arranged that they do not interfere with his school attendance.

### ***Type of Allowed Works***

Although adolescent workers are not allowed to do hazardous works<sup>29</sup>, yet certain exceptions namely, necessity and public interest allow the employers to assign them with dangerous machine works<sup>30</sup>. If the adolescent worker is sufficiently trained and instructed as to the dangers of the work, he/she may be employed by the employer to work on dangerous machines. This provision, however, may strike the very essence of article 3(d) of the Worst form of Child Labour Convention, 1999 as it provides that work which is, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, and morals of the children are included in worst forms of child labor.

However, ground stories show the other way around as in many cases, adolescent persons are indulging in hazardous work like working in a bidi cigarette company<sup>31</sup>, and that too in unsafe and unhygienic working conditions.

### ***Penalty and Punishment***

The 2006's Act prohibits the guardians to agree in respect of the child in contravention of section 35. Now that it only applies in respect of the child, it enables the guardians to make an agreement with anyone, allowing an adolescent to be appointed for any work.. Punishment for violating article 35 is fine which may extend up to taka 100<sup>32</sup>. Moreover, the penalty for not abiding by Labor Act, 2006 and forcing a child into child labor is imprisonment that may extend only up to 3 months and a fine that may extend up to 5000 takas<sup>33</sup>. The HCD in *Ask vs Bangladesh* observed that such punishment is very much inadequate<sup>34</sup>, and so is the amount of fine if Bangladesh's current socio-economic situation is taken into account. To address the

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<sup>26</sup> Id, Section 44. It also states that hours of work of such child, where he is school going, shall be so arranged that they do not interfere with is school attendance.

<sup>27</sup> Id. Section 41

<sup>28</sup> Id.

<sup>29</sup> Id, Section 39.

<sup>30</sup> Id, Section 34(4).

<sup>31</sup> *Ain-O-Salish Kendra vs Bangladesh* 63 DLR (2011) 95.

<sup>32</sup> The Bangladesh Labour Act; 2006, Section 285

<sup>33</sup> Dual effect of Sections 283 and 284 of the Act.

<sup>34</sup> *Ask vs Bangladesh* (n 31) Para 32.

problem, the Corporations and Industries should be made monetarily liable more and more to pay the fine<sup>35</sup> for violating the Act.

### **7. The Judgment of *Ain-O-Salish Kendra (ASK) vs Bangladesh* and Policy Recommendations**

The HCD, in this case, took a pro-children rights stance and through interpretation of articles 34 and 17 of the Constitution held that child labor is a violation of the constitutionally guaranteed rights, and immediate and proper actions are necessary to stop that. The court observed,

*“Just like a mother, a nation is duty-bound to provide all facilities for the child to grow in a healthy atmosphere, to flourish in education, and to better the lives of their families as well as the interest of the nation.”*<sup>36</sup>

The matter came before the court when ASK filed a writ petition seeking the court to declare a continuous failure of the state in providing a safe, unhygienic workplace in bidi-making factories in Rangpur where 25000 children aged 4-15 were working.

The judgment was balancing and carefully written in sync with the international human rights law developments. Apart from construing national legislations, Imam Ali J. relied on “Worst Forms of Child Labour Convention, 1999” to give his interpretations of the rights of the children and obligations of the state. Instead of going for a strict ban on child labor, he echoed with the existing legal framework under the Labor Act and directed the respondent to ensure that those children under the legal age stipulated by the statute do not engage in such activities. The judgment kept a harmonious balance between child labor and the state’s necessity, yet emphatically endeavored to ensure the right of the child workers. In doing so, it emphasized more on guaranteeing proper, safe, and unhygienic working conditions than on completely restricting the employers to employ the children and adolescents in their establishments<sup>37</sup>.

But the most important observation that came from the court was about ensuring compulsory education to children under article 17 of the Constitution of Bangladesh. The court observed financial impediments as the most vital factor forcing children to work. To this end, it proposed active and positive acts from the state to provide the children and their families with financial assistance. In its words,

*“Ministry of Education must take necessary steps so that mandate under article 17 of the constitution becomes a reality and not lip service. To that end, steps must be taken to ensure that children can attend school without jeopardizing the family’s food security. In other words, there must be financial provision for the family so that child’s attendance at school should not result in the reduction of family’s income-earning capacity”*<sup>38</sup>

After a thorough reading, these observations may be doubted as positive enforcement of the Fundamental Principles of State Policy (FPSP), which are not enforceable in the court of law<sup>39</sup>.

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<sup>35</sup> Id.

<sup>36</sup> Id, para 29.

<sup>37</sup> Id, para 32.

<sup>38</sup> Id.

<sup>39</sup> Article 8 (2) of the Constitution of Bangladesh.

Nonetheless, these observations form policy guidelines that the Supreme Court as the protector and interpreter of the constitution is allowed to suggest. Furthermore, we have seen jurisprudential developments in countries like the Republic of South Africa where in alike circumstances rights like ensuring housing have been enforced by a court of law because the government had not taken reasonable legislative and policy measures to achieve the right to have access to adequate housing<sup>40</sup>.

Further, the court took the approach provided by *MC Mehta vs the State of TN*<sup>41</sup> and gave directions and policy guidelines to the concerned authority to ward children away from hazardous work and make scope to prove alternative solutions.

Court's suggestions and Policy recommendations can be summed up in the following paras:

- The Child Labor Rehabilitation Fund should be made whereon fines provided by employers breaching law will keep on.
- Provisions regarding fines cannot cater to the purpose of the law as they are decisively adequate. The fines should be increased considering the socio-economic conditions.
- The Child Labor Elimination Policy of 2010 should be implemented properly.
- Compulsory education for children should become a real concept and not mere lip service.
- Government should take steps to identify places, where children are engaged in hazardous work and policy, should be made and implemented to rehabilitate them.
- There should be a separate Ministry for Children.
- Policies for providing financial and other benefits to the child workers' families must be made so that such children's attendance at school does not result in the reduction of the families' income.
- Government must take necessary steps to ensure a healthy working atmosphere for lawfully engaged child and adolescent workers.

## 8. Conclusion

Child labor continues to be a developmental challenge even after so many developments and the adoption of international and national strategies to battle it, and there also remains a regional absorption of the problem within South Asia<sup>42</sup>. Bangladesh faces it more as the problem of child labor is a socio-economic reality of Bangladesh, and at the same time poses threat to society so much so that it cannot be ignored. To note, Bangladesh's developing economy demands a massive workforce and child labor being cheap and easily available contributes to the economy almost as much as other groups of laborers. But whether such economic growth, coming at the cost of compromising a section of children's childhood and grooming, is sustainable or not is a debatable issue.

But no way should the government compromise with the rights of the children as observed in the *ASK vs Bangladesh Case*. Moreover, rather than banning child labor at all, the government should regulate it and ensure a safe environment for working children (both children and

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<sup>40</sup> Government of the Republic of South Africa versus Grootboom 8 (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

<sup>41</sup>(1996) 6 SCC 756.

<sup>42</sup> Rakesh Mondal and others, 'Profile of child labor in Indian railways' (2012) 79(10) Indian Journal of Pediatrics 1347-1350.

adolescents). To this end, it should amend the laws to completely restrict the employment of child workers for working on dangerous machines<sup>43</sup> and discourage child labor by providing financial benefits to the child laborers' families under any special fund specifically made for that. For monitoring all these issues and ensuring proper regulation of policies and laws, a separate Child Affairs Directorate or Division<sup>44</sup> under the Ministry of Women and Child Affairs (MOWCA), if not a completely separate ministry as suggested by Justice Imam Ali in the case of *Ask vs Bangladesh*, shall be made. Report on the Governance Mechanism of MOWCA suggests that the MOWCA is conclusively more concentrated on the rights of the women than that of the children.<sup>45</sup> Moreover, under the existing framework, there could be no separate budget allocation specifically aimed for the protection of the children's rights unless a separate Children Affairs Division is established.<sup>46</sup> This will allow a division to formulate policy, planning and take secondary legislative measures to monitor and evaluate the child laborer's situation in Bangladesh. The report also advocated that a National Child Rights Commission should be formed, which would be a statutory public authority as defined under Article 152 of the Constitution of Bangladesh. The observations therefore suggest that if a separate ministry is not possible for resource constraints, then at least an Administrative unit like 'Division' under the Ministry of Women and Child Affairs shall be formed specifically to protect the interests and rights of the aggrieved children groups.

Last but not the least, a balancing approach- based on the International standard for the protection of the rights of the child laborers and the recent judicial developments shall be carved out for saving both the economy of the country and the rights of the children at the same time.

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<sup>43</sup> Under section 40 of the Act, it is allowed now.

<sup>44</sup> Such Division is possible under the existing legal framework in view of the Rule 3(i), Rules of Business, 1996. Under Rule 2 (f) of Rules of Business, 1996 "Division" means a self-contained administrative unit responsible for the conduct of Business of the Government in a distinct and specified sphere and declared as such by the Government.

<sup>45</sup> M.M. Kabir, *Governance Mechanism of Ministry of Women and Children Affairs (MOWCA) from Child Rights Governance Perspective* (Child Rights Governance Assembly, Dhaka, 2014).

<sup>46</sup> *Ibid*, 15