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"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-Article 27 of the Constitution of the People's Republic of Bangladesh

LAW *alter views*

THE CHILD LABOUR LAWS OF BANGLADESH

Soft hands in floating dustbins

J. HASAN

FROM dawn to dusk, thousands of workers, many of them as young as 10 years old, are found to work in vast sandy Sitakunda beach littered with metal scrap from ships. The 20-mile area at the Chittagong end of Dhaka-Chittagong highway is strewn with broken glass, steel spikes, sharp-edged iron sheets and piles of metal scrap. Workers including children can be seen carrying heavy iron sheets on their shoulders. According to rights groups, at least 18 to 20 workers are injured everyday, yet no medical facilities are provided by the employers.

This is the second largest ship-breaking yard in Asia. Having no natural metal resources, Bangladesh has become destination of scrapped ships of the developed countries. These ships are recycled for scrap metal to feed the re-rolling mills of Bangladesh. But the working condition in these scrap-shipyards is horrific for workers particularly for child workers. According to Bangladesh Institute of Labour Studies (BILS), there are about 2000 children and adolescents (between the ages of 10 and 14) out of 30 thousand works in these yards. Although most of these child workers work as 'helpers', as said by the industry owners, but the real situation is different. Many of these child workers are found working shoulder-to-shoulder with adult workers in scrapping an entire vessel with their bare hands. Cranes used to remove engines and other overweight items are rarely tasted resulting in frequent fatal accidents. Standing at wrong place at wrong time can easily crush or behead a child worker. Many of the future adults are found barefooted or only wearing flip-flops with sharp, rusty metal shards and splinters lying scattered on the floor. The ships remain full of dangerous gases and sufficient measures are not taken to clean those before scrapping. While an average adult worker is paid between Tk. 140 to 180, a child 'helper' is paid Tk. 60 for 8 hours of work a day. No statistics of death/injury of child workers out of 400 dead workers and 3000 injured workers has been available.

Child labour in Bangladesh Laws

Name of Act/Ordinance	Child
Children Act, 1974	up to 16 years
Children (Pledging of Labour) Act 1933	up to15 years
Employment of Children Act 1938	up to 15 years in case of railway transport and carriage of goods in port up to 12 years in case of specified hazardous occupations
Tea Plantation Labour Ordinance, 1962	up to 15 years
Factories Act, 1965	up to 16 years
Shops and Establishment Act, 1965	up to 12 years
Road Transport Workers' Ordinance, 1961	up to 18 years
Mines Act, 1923	up to 15 years

Main causes of child labour

- Poverty
- Entrenched tradition
- Lack of schools
- Migration
- Push factors
- Pull factors
- Interactive factors

The Children Act, 1974

This law was enacted to consolidate and amend the hitherto existing laws relating to the custody, protection and treatment of children and trial and punishment of young offenders. Section 44 of Part (vi) of the Act is relevant for child labour.

Section 44

(1) Whoever secures a child ostensibly for the purpose of manual employment or for labour in a factory or other establishment, but in fact exploits the child for his own ends, withholds or lives on his earnings, shall be punishable with fine, which may extend to Taka one thousand.

(2) Whoever secures a child ostensibly for any of the purposes, mentioned in sub-section (1), but exposes such child to the risk of seduction, sodomy, prostitution or other immoral conditions shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Taka one thousand, or with both.

Comment: This Act is silent about exploitation of children in the name of family enterprises/businesses. The issue is whether such exploitation in the name of family business is punishable or not.

The Children (Pledging of Labour) Act, 1933

This Act was passed to prohibit the making of an agreement to pledge the labour of children and employment of children whose labour has been pledged.

Section 3

An agreement to pledge the labour of a child shall be void.

Section 2

An agreement to pledge the labour of a child means an agreement, written or oral, expressed or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilised in any employment:

Three conditions

- Such agreement will not be void if it is without detriment to a child.
- Such agreement will not be void if made in consideration of any benefit other than reasonable wages to be paid for the child's services.
- Such agreement will not be void if it is terminable with one week's notice.

Comment: Whether an agreement is detriment to a child is to be decided by court of law. Due to absence of any case law/precedent, there is no legal interpretation in this regard.

The Employment of Children Act, 1938 and Rules 1955

Section 3(1)

-Employing or permitting children of less than 15 years is prohibited in any occupation

- connected with the transport of passengers, goods or mails by railway, or
- involving the handling of goods within the limits of any port.

Comment: Children above 15 years are allowed to be employed in such occupations which may prove to be hazardous for them and therefore it comes into conflict with ILO Convention 182.

Section 3(2)

Children up to the age of 17 must not be employed in any such occupation referred to in sub-sec. (1) unless interval of at least 12 consecutive hours is allowed to them, which must include 7 consecutive hours between 10pm and 7am.

Comment: The above provision technically allows the children up to 17 years of age to work during evening up to10pm. It also technically allows employment of children between 17 and 18 years to work even between 10pm and 7am. This may be hazardous for such children.

-Rule 8 to the Act lays down that such children may be permitted to work between 10pm to 5am if

- he is an apprentice/receiving vocational training
- the period of employment does not exceed 6 hours a day
- a competent medical officer certifies him to be fit to work during those hours
- he is employed under the supervision of a person of more than 18 years
- rest of 13 consecutive hours is allowed

Comment: The above provision enables the employers to force an apprentice or a trainee of between 15 and 17 years of age to work in night hours which night be hazardous for that child. Moreover these conditions need not be observed in case of children between 17 and 18 years.

Section 5

-Employment of children below 12 years is prohibited in the following works:

- Tobacco (Bidi making)
- Carpet weaving
- Cement manufacturing/bagging
- Cloth printing, dyeing and weaving
- Manufacturing of explosives, fireworks and matches
- Mica-cutting and splitting
- Shelluc manufacturing
- Soap manufacturing
- Tanning
- Wool cleaning

Comment: Children above 12 years and below 18 years of age are impliedly permitted to be employed in these sorts of works. Any violation of any provision of the Act amounts to a fine extending up to Tk. 500, which is too weak a punishment to deter employers from employing child labours.

The Factories Act 1965 and Rules 1979

A factory is a place where 10 or persons are employed.

Section 66

No child who has not completed fourteen years of age shall be required or allowed to work in any factory.

Rule 76

No child under the age of 14 years shall be permitted within the work rooms and godowns of any factory at any time during which work is carried on.

Section 25

No young person shall work at any machine unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, has received sufficient training in work at the machine or is under the supervision by a person who has thorough knowledge and experience of the machine.

Section 29

No person below the age of 16 will be allowed to work in any factory for pressing cotton in which a cotton opener is in operation.

Section 70

A child cannot be employed in a factory to work for more than five years in a day and between the hours of 7pm and 7am.

Rule 83

Hazardous operations for children under section 87 are:

- glass manufacturing
- grinding or glazing of metals
- electrolytic planting
- manufacturing, treatment or handling of lead
- gas generation from petroleum
- cleaning/smoothing articles by jet of sand, metal shot or grit
- liming and tanning of raw hides
- feeding of jute, hemp or other fibres into softening machines
- lifting, stacking, storing and shipping of jute bales
- manufacturing, storage or use of cellulose solutions
- manufacturing of chromic acid/sodium/potassium/ammonium
- printing press/type foundries
- pottery
- rayon manufacturing

Rule 48

Lifting limit

Adolescent male	50 pounds
Adolescent female	40 pounds
Male child	35 pounds
Female child	30 pounds

Shops and Establishment Act 1965 and Rules 1970

A shop/establishment is a place where five or more persons are employed.

Section 2

No child, who has not completed the age of 12 years is allowed to be employed in any establishment.

A young person who has not completed eighteen years is allowed to work in an establishment provided that he does not work for more than seven hours a day or 42 hours per week. These limits may be extended to 52 hours per week if overtimes payments are included.

Comment: Any violation of above provision will lead to a fine of Tk.250. For subsequent offences, punishment includes imprisonment extending up to three months or a fine of Tk. 500. This punishment is too weak to deter probable violator.

International Laws against Child Labor

The Minimum Age Convention, 1973 (no. 138) of ILO provides following options regarding minimum age for labor:

C. 138	General	Exception for developing countries
Basic minimum age	15	14
Dangerous work	Normally: 18Under certain conditions:16	No exceptions
Light work	13-15	12-14

According to The Worst Forms of Child Labour Convention, 1999 (no.182), the worst forms of child labour comprise: (a) all forms of slavery or practices similar to slavery and forced or compulsory labour: (b) use, procuring or offering of a child for prostitution, for production of pornography; (c) use, procuring or offering of a child for illicit activities such as production and trafficking of drugs; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. Effective and time-bound measures to eliminate the worst forms of child labour include preventive measures, removal from work, rehabilitation and social integration through among others, access to free basic education and reaching out to children at special risk and taking account of the special situation of girls.

According to Article 32 of the United Nations convention on the Rights of the Child 1989, State Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual and moral or social development. State parties are under obligation to take legislative, administrative, social and educational measures to provide for a minimum age or minimum ages for admission to employment, to provide for appropriate regulation of the hours and conditions of employment and to provide for appropriate penalties or other sanctions to ensure effective enforcement of these provisions.

Analysis

No law in Bangladesh has defined 'hazardous' or worst forms of child labour. In Factories Act 1965, under section 87, there are some dangerous operations, which can be termed as hazardous or worst forms of child labour. In the schedule of the Employment of Children Act 1938, there are ten processes, which can be termed as hazardous or worst forms of child labour. Case laws/precedents regarding child labour law issues in Bangladesh are not available. Not many cases have been filed challenging the violation of child labour laws. Bangladesh has signed and ratified the UNCRC and ILO Convention no. 182. For implementing the provisions of the Convention in Bangladesh, some amendments are required to be made in the existing laws or a new law needs to be enacted.

Enforcement mechanism

Department of Inspection has regional and zonal offices for enforcement of labour laws. Its functions include

- Inspection of factories, shops, commercial establishments, tea plantations, ports/docks, railways, inland water transport and road transport under labour laws for enforcement of the provisions relating to safety, health, hours of work, rest etc.
- Prosecution against the violation of labour laws in different courts etc.

There are seven labour courts in Bangladesh. They are established under Industrial Relations Ordinance of 1965 for resolving mainly labour disputes. But they have jurisdiction to adjudicate violation of all labour laws (Section 35, IRO).

There is one Labour Appellate Tribunal. This usually disposes off disputes settled in labour courts but appealed for further adjudication.

The Author is a human rights activist.

HUMAN RIGHTS *monitor*

Hungarian Courts condemn segregation of children with learning disabilities

On 7 October 2004, in a major test case, the Budapest Metropolitan City

Court of Appeals (Fővárosi Ítélőtábla) upheld the first instance court decision, dated 1 June 2004, by which the Borsod-Abaúj-Zemplén County

Court ordered the primary school in Tiszatarján and the local governments of Tiszatarján and Hejőkürt respectively to pay damages in the total amount of 3 650 000 Hungarian forints (approximately 14600 euro), with accrued interest, to nine families whose children have been unlawfully kept in a segregated class and taught based on a special (inferior) curriculum from 1994 to 1999, in the absence of any prior certification declaring them mentally deficient and unable to attend regular classes. All of the children affected, most of them Romani, came from families with low income and social standing in the community and have accordingly had difficulties in asserting their legal rights and interests in the education context.

The complaint, filed in 2001 by attorney Lilla Farkas as part of a joint strategic litigation project undertaken by the Legal Defence Bureau for

National and Ethnic Minorities (NEKI) and the European Roma Rights Center (ERRC), was based on the school psychologists' assessment that rather than being afforded additional support for their learning difficulties, it was "in the children's own best interest" to be placed in a special class for the mentally deficient, disregarding their age, pedagogical and psychological authority, and ultimately even the prescribed legal procedure.

Moreover, following their segregation, the plaintiffs, otherwise pupils with normal IQs, were taught by an unqualified student teacher and bullied by their peers as "retarded", thus further adding to their stigmatisation.

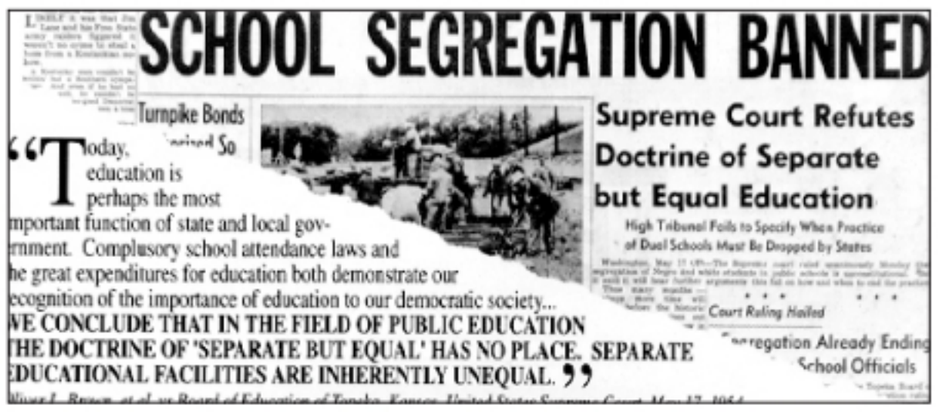
In its judgement of 7 October 2003, the Budapest Metropolitan City Court of Appeals concluded that the segregation of the plaintiffs by the school and the local authorities was in breach of the Hungarian Public Education Act.

It also stressed that as a result of this practice the plaintiffs have suffered and will continue to suffer profound psychological harm. In addition, the court held that the school had clearly failed to recognise and address the plaintiffs' learning difficulties and had instead chosen to administer an inferior curriculum which has jeopardised their future development.

The court pointed out that on completing their studies the plaintiffs will suffer additional disadvantage in terms of diminished chances for further education as well as with regard to their employment opportunities compared to their peers schooled on the basis of the regular curriculum.

Finally, the court concluded that the local authorities of Tiszatarján and Hejőkürt, in their capacity as funders and supervisors of the school in question, did not secure and maintain its lawful operation and held that this in and of itself amounts to major negligence.

NEKI and the ERRC welcome the ruling of the Budapest Metropolitan City Court of Appeals as a crucial precedent establishing that segregation and stigmatisation of children with learning difficulties is both morally unacceptable legally untenable.


SCHOOL SEGREGATION BANNED

Supreme Court Refutes Doctrine of Separate but Equal Education

High Tribunal Fails to Specify When Practice of Dual Schools Must Be Dropped by States

Turnpike Bonds

"Today, education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society...

WE CONCLUDE THAT IN THE FIELD OF PUBLIC EDUCATION THE DOCTRINE OF 'SEPARATE BUT EQUAL' HAS NO PLACE. SEPARATE EDUCATIONAL FACILITIES ARE INHERENTLY UNEQUAL."

Court Ruling Hailed

Segregation Already Ending School Officials

Throughout Europe, pupils of Romani origin suffer racial discrimination in education. Their overwhelmingly disproportionate placement in special schools or special classes for the mentally deficient, or in other forms of substandard, stigmatising schooling arrangements, can have no reasonable and objective justification.

Source: The European Roma Rights Centre.