



RIGHTS WATCH

Reforms the Child Development Centres need to make

Developing a better monitoring system and maintaining data as well as keeping records of the children in CDCs is a necessary precondition for improving the standard of protection provided in the CDCs.

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Ensuring liberty of children in the administration of justice is a serious global concern. It was revealed in United Nations Global Study on Children Deprived of Liberty 2019 that 410,000 children are deprived of liberty in pre-trial detention and prison every year. The basic framework at the international level to ensure protection of children is the UN Convention on the Rights of Child (CRC) 1989. Article 37 of the CRC requires parties to treat children who are deprived of liberty with humanity and respect for the inherent dignity of the human person. Article 40 confers an obligation upon state parties to ensure that children accused of or held liable under domestic law to be treated in a manner consistent with the promotion of the children's sense of dignity and worth. This would in turn reinforce the children's respect for human rights and fundamental freedoms of others. In addition, this would improve the desirability of promoting children's reintegration assuming their constructive role in society.

Bangladesh ratified the CRC and its two Optional Protocols and thus the country is under an obligation to adopt standards contained in these instruments. In line with its commitment to the CRC, the Government framed the National Child Policy 2011 followed by the enactment of the Children Act 2013. Although the Act contains certain basic features including ensuring best interest of the child at all level, the main challenge of effective implementation of the standards remains far from realisation. Section 59 of

the Children Act mandates the establishment of Child Development Centres (CDCs) for children held in detention. Till date, only three CDCs under the Ministry of Social Welfare have been established – in Tongi with the capacity of accommodating 300 boys, in Konabari of Gazipur District with the capacity of accommodating 150 girls, and in Jashore District with the capacity of accommodating 150 boys. According to the report of Justice Audit Bangladesh 2018, 716 children have been in the detention centres in Bangladesh. The report mentions that Tongi CDC accommodates 384 children of which 379 were under trial and Jashore CDC accommodates 213 children of which 204 were under trial. It is a clear reflection that the existing accommodation mechanism is insufficient for the detained children. This is a serious barrier in ensuring the rights of the children during the administration of justice. In addition, without proper accommodation, detained children face physical and psychological impediments in the long run. It is high time that the Government build more centres with modern facilities for detained children considering the geographical proportionality. No CDCs have been built in Chittagong, Sylhet, Rajshahi, Barisal, Mymensingh and Rangpur division.

Furthermore, the detention centres should adopt diverse measures to focus on the development of children. They should specially incorporate facilities for education, creative activities and other opportunities as per their age and special requirements. Besides, measures should be taken to protect younger

detainees from being indoctrinated into further criminal instincts by older detainees. Exploitation of younger detainees by the senior gangs is a matter of serious concern. Another important area of focus should be to build better relations between the CDC staff and the detained children. This is essential in order to prevent all forms of violence against children perpetrated by the staff.

Developing a better monitoring system and maintaining data as well as keeping records of the children in CDCs is a necessary precondition for improving the standard of protection provided in the CDCs. Many of the cases are lost from attention due to non-availability of proper information and records of the concerned child. The CDCs should keep updated record of each child and Ministry of Social Welfare should monitor. This will ultimately help in preventing further commission of crimes and formulate constructive policies.

Developing partnerships with INGOs and local NGOs for the overall development of children in CDCs is needed. The MoSW can play the role of facilitator in allowing these bodies to contribute in different aspects of child detainees' development. For example, the UNICEF collaborated with the Department of Social Service to reunite released children, provide safe reintegration etc.

Making CDCs a safe haven, perfect home and a centre of reformation for the future generation should be of utmost priority.

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RIGHTS ADVOCACY

Are we validating child marriage through 'special circumstances' provision?

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Marrying off of female children at an early age is not a new phenomenon in the Indian subcontinent. Due to socio-economic reasons, people very often let their female children marry at such a young age which is not permitted by law. Even medical science does not permit such early marriage considering physical and mental health impact of early marriage.

The Constitution of Bangladesh confers duties on the state, the indirect aim of which is to ensure gender equality, female education and thus step forward to reduce child marriage.

Article 18(l) of the Constitution of Bangladesh directs that the government is to raise standards of public health and nutrition. The state also has responsibility under article 17 to adopt effective measures for the purpose of free and compulsory education to all children to such a stage as may be determined by law. Among others, these provisions are crucial factors in reducing the causes behind child marriage.

The Child Marriage Restraint Act, 2017 contains stricter provisions for the restraint of child marriage than the earlier law which it replaced. In various sections, it has incorporated punishment for the solemnisation and registration of child marriage for the concerned parties as well as for anyone who abets the solemnisation of a child marriage. For the proper implementation of the Act, Rules have been enacted which elaborately provide the duties and functions of various local and national authorities concerned with the law.



Although harsh provisions against child marriage and praiseworthy emphasis on preventive measures are there in the new law, there is and has been a burning concern regarding the inclusion of 'special provision' for child marriage. It is an exception to the provisions provided against child marriage in the law. According to section 19, for the best interest of the under-aged child in any particular context prescribed by the Rules, marriage shall not be deemed to be an offence under the Act, if it is solemnised in accordance with the procedure prescribed by the Rules, with the direction of the Court, and with the consent of the parents or, in applicable cases, the guardian.

Unfortunately, the procedure laid down in the Rules for special marriage of an under-aged child is very complex. Further, there is no minimum age limit under which this special treatment cannot be availed. It frustrates the very aim of the law for which such special law has been enacted. It opens the floodgates by not mentioning minimum age and negatively encourages child marriage. Neither in the Act nor in the Rules has it been provided which circumstances will be regarded as special.

In accordance with the Sustainable Development Goals (SDGs), Bangladesh has pledged to end child marriage by 2030. It is a matter of harsh reality that Bangladesh ranks fourth in the world and first in South Asia in terms of child marriage. A 2020 UNICEF data places 38 million girls and women in the country married before they turned 18; 13 million of those married before they turned 15. To achieve the government's target of eliminating child marriage by 2041, current efforts to end child marriage need to be increased at least 8 times.

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LAW REVIEW

Legal challenges to eradicate child labour

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Child labour is a burning global issue that threatens the health and general welfare of children. It is hugely prevalent in developing countries like Bangladesh. There exists some anomaly regarding the definition of a child in Bangladeshi laws. Section 4 of the Children Act, 2013 regards any person who is under 18 years as a child. In contrast, section 2(63) of the Bangladesh Labour Act, 2006 (BLA) defines a child as someone who is below 14 years of age. Section 2(8) of the BLA considers children aged between 14 and 18 years as "adolescents".

Bangladesh has established a legal framework to curb child labour and safeguard children from the hazardous work conditions. Under section 34 of the Bangladesh Labour Act, 2006, employing children aged below 14 years or permitting a child to work in any occupation or establishment is prohibited.

Under the BLA, an adolescent cannot be employed to work in any occupation unless a certificate of fitness is obtained and he carries a token containing a reference to such certificate while at work. There are also provisions which prohibits employment of adolescents in certain hazardous work.

Additionally, Bangladesh has also signed international instruments which address child labour and protection of children from hazardous work conditions. Recently this year, Bangladesh ratified the Minimum Age Convention, 1973 (No. 138), which will enter into force in Bangladesh on 22 March 2023.

Despite such a decent legal framework, Bangladesh is yet so far from making any considerable progress in curbing child labour in practice. According to National Child Labour Survey (NCLS) 1995-1996, there were about 6.3 million of child workers of age 5-14 years



among 34.4 million of children. There were 4.7 million of children of age 5-14 years involved in child labour among 35.1 million of children of the same age group, as revealed by the NCLS of 2002-2003. However, subsequently, the number of child workers dropped a little – as

per the NCLS of 2013, there were 3.45 million of children of age 5-17 years involved in child labour, among which 1.28 million children were in hazardous jobs. Hence, even after the enactment of laws and ratification of international instruments safeguarding children from child

labour, Bangladesh is way behind in making any substantial progress in the eradication of child labour.

One of the primary reasons for the failure of the implementation of child labour laws is the lack of monitoring and enforcement of those existing laws. The fire accident at the Hashem Food factory last year, which took the life of 16 children (they went missing after the fire broke out and were not found later), demonstrates how fragile the enforcement mechanism for the laws safeguarding the children from child labour is in Bangladesh. Moreover, under section 284 of the Bangladesh Labour Act, 2006, the punishment for employing a child or adolescent in contravention of the law is only a nominal fine up to 5,000 taka. Such minimal penalty for this severe offence is itself feeding the growth of the offence of child labour and is an ineffective deterrent. Additionally, the socio-economic factors such as poverty,

lack of awareness and embedded tradition, parents' feelings of insecurity about their children and lack of education of the parents with other miscellaneous factors are largely responsible for this miserable scenario of child labour in Bangladesh.

The first effective step towards eradicating the miserable scenario of child labour can be the adequate monitoring and proper enforcement of the laws prohibiting child labour. The anomaly as to the definition of a child should be addressed. Further, an enhanced fine and penal mechanism for employing children may act as a deterrent. Most importantly, the socio-economic factors as discussed above have to be addressed and dealt with; otherwise, however decent the legal framework is, it will offer nothing but failure.

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