

LAW BEYOND THE BOOKS

Rethinking the child labour laws in Bangladesh



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Child labour in Bangladesh is typically associated with factories and hazardous industries. Yet a recent experience by the law students from East West University revealed another reality of the street children whose labour remains largely invisible in law and policy discourse. Recently, a group of law students from East West University Law Clinic, with the support of a social organization Pother Ishkul, organised a series of sessions with street children under the "Street Law" programme conducted by

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the Law Clinic. Through open conversations they engaged with seventeen children between the ages of seven and seventeen, mostly living around the Gulistan Stadium Gate No. 3 area. These children worked in small tea stalls, Sharbat shops, scrap collection or sweeping. Their daily earnings ranged between 100/- to 300/-, barely enough to survive.

The Bangladesh Labour Act 2006 recognises

three categories of workers based on their age-children under fourteen who are prohibited from employment, adolescents between fourteen and eighteen who are allowed to work under certain conditions, and adults being eighteen or above who are fully eligible for employment. What the law failed to recognise is the existence of children under fourteen who are compelled to work for survival, placing them entirely outside regulation. It is true that international instruments such as the ILO Conventions and the United Nations Convention on the Rights of the Child emphasise protecting children from hazardous labour; however, it is equally important that law does not remain isolated from local realities. The law cannot function with the assumption that in Bangladesh every child under the age of fourteen has family care or social protection.

The grim consequences of this legal vacuum become even more apparent through individual stories. The law students met Nahid, a fifteen-year-old boy who collects scrap materials during the day and also works as a sweeper. He earns about 300/- a day, and deposits the entire amount with a shop owner. He has no idea how the money is kept, or whether he will ever be able to claim it back. This is not an isolated story, across Ershad Road and beyond, hundreds of children live in the same way. Another boy, Arif, aged seventeen, works at a tea stall and is forced to pay 100/- everyday as chanda even with his irregular income. Fifteen-year-old Nur-A-Alam collects loads of scarps across Dhaka, doing such heavy lifting as no child should do. Twelve-year-old Rafi works with his uncle in a small tea-stall and has never been inside of a classroom.

Fourteen year old Jibon sweeps the street around bus terminals and has to share his little income with his younger brother. Another child, Badar, the youngest aged only seven years, does not yet work, but his future hangs in uncertainty. A local group is trying to get him enrolled in a school but this is merely a glimmer of hope in an otherwise bleak reality.

Conversation with the employers of these children revealed another layer of complexity which is not reflected in the law. It should be noted that these children are employed by small vendors working within the informal economy themselves, many of whom struggle to make ends meet. One of such employers, a vendor, locally known as Chandu Mama, explained that many of the children who work under him do not have any birth certificates. Without identification documents, they lack recognition as a citizen, and cannot access education or healthcare. He recalled a time when he had to use his own identification papers to register the marriage of one boy who had no legal identity of his own. Another shopkeeper explained that the children working in his stall do not have fixed hours, nor do they get proper medical attention when sick. Even toilets and bathing facilities require payment, making hygiene a daily challenge for these children.

From a legal perspective, these employers are in violation of the Bangladesh Labour Act 2006-section 34 in particular. Apart from employing children under fourteen, which is expressly prohibited by the Act, these employers also do not maintain employment records, cannot ensure occupational safety, and are unable to provide

most of the facilities mandated by the Act. If they are forced to comply fully, the inevitable outcome would be the dismissal of all underage workers. And once again, it is the same children who will bear the brunt.

Labour laws must therefore respond to the lived reality, particularly that of the street children, and policies must be framed in a way to accommodate the real needs. It is important to clarify that the solution certainly does not lie in legalising child labour, but in recognising that pushing a vast majority of working children outside the scope of legal protection is no solution either. Based on their field visit, the students at East West University's Law Clinic propose that a more viable approach lies in developing a regulatory framework that govern child labour in a manner that prioritises and safeguards the best interests of the child above anything else. Accordingly, special provision should be introduced in the labour legislation for street children under fourteen years, recognising their compulsion to work for survival; guidelines should be developed for small-scale employers employing street children, that focus on safety, fair wages, and non-exploitation; and transitional education programmes should be implemented that combine part-time schooling with part-time work, enabling children to gradually shift away from full-time labour while maintaining their livelihood.

The writers are students of law, East West University, who conducted research with their peers as part of a project with the Law Clinic Programme under the supervision of Oishe Rahman, Lecturer, East West University.

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Staying criminal proceedings due to pending civil suits

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Stay of criminal proceedings refers to the issue of not proceeding with a criminal case until a formal judicial order reopens it because the matter is sub-judice or pending in another court. The concept comes into play especially when there is a pending civil litigation on the same subject-matter because it entails a potential risk of contradictory judicial decisions.

Although our Constitution and other statutory laws do not give an explicit answer to whether criminal proceedings should be stayed when civil suits remain pending, several legal principles and judicial precedents evolved within the constitutional and statutory ambit, adding to the court's discretion to stay the proceedings in appropriate cases.

The procedural aspects of the stay of criminal proceedings are founded upon the interpretive guidance derived from the constitutional provisions such as right to protection of law (article 31), right to fair trial (article 35), and the writ jurisdiction of the High Court Division (HCD) (article 102). On the other hand, statutory provisions from the Code of Criminal Procedure 1898 (CrPC) and the Code of Civil Procedure 1908 (CPC), and several binding legal precedents supplement these constitutional protections. For



instance, sections 344 and 561A of the CrPC contemplate judicial interventions in staying criminal proceedings. The former permits adjournment or postponement of criminal proceedings, while the latter grants inherent power to the High Court Division to prevent abuse of process and to secure the ends of justice. These provisions, in different circumstances, have been applied, recognising that with parallel proceedings arising out of the same transaction may warrant an adjournment of the criminal proceedings. As of judicial precedents having binding force in genuine circumstances, the court decided whether it

would apply its inherent powers in disputes, amongst others, relating to the same financial transactions, title declaration, cases of forgery, and fraud as well as prosecution under Negotiable Instrument Act 1881 (NI Act). In case of parallel civil and criminal proceedings involving the same parties arising out of the same financial transactions, the HCD invoked its inherent power under section 561A, and stayed criminal proceedings under section 138 of the NI Act, in view of a pending Artha Rin Adalat suit (2016). The Court opined that to deposit a sum in both proceedings is likely to cause undue hardship on the accused.

However, in a 2013 case, the Appellate Division opined that a civil suit under section 42 of the Specific Relief Act, 1877 on the same cause of action, does not bar prosecution under section 138 of the NI Act. It viewed that the accused could present defence against the allegation of fraud within the criminal trial itself. Same views have been upheld in some other cases recorded in 9 BLC (HCD) 88, 11 BLC 116, and 49 DLR 258.

Again, in a 1991 case, we saw that where forgery is alleged in a criminal proceeding, and at the same time, documents in question

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are also the subject of a civil proceedings, the AD held that criminal proceedings may be stayed if the civil suit was filed first and involves the same documents. In scenarios involving simultaneous prosecutions under section 420 of the Penal Code 1860 and section 138 of the NI Act, no direct judicial precedent in Bangladesh currently exists. However, Article 35(2) of the Constitution and Section 403 of the CrPC (prohibition of double jeopardy) offer guidance on avoiding redundant oppressive prosecutions. In 56 DLR 622, the HCD acknowledged that the existence of a counter case arising from the same incident can justify an adjournment. This reflects a commitment against contradictory outcomes.

In summary, in the absence of any explicit rule, it is left to the court's discretion to decide whether it would stay a criminal proceeding due to a pending civil suit. The rule on staying proceedings reflects a complex interplay of statutory discretion, constitutional safeguards, and judicial activism ensuring that the legal process is not misused as a tool of oppression, while upholding the integrity of criminal adjudication.

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