

ISSN 1991-8976

Rajshahi University Law Journal

Volume 07 2010



Faculty of Law University of Rajshahi

Changes and Reforms of Value Added Taxes (VAT) and its Application in Bangladesh: An Analytical Study with Special Reference to the Finance Acts

Encountering Food Safety Challenges in Bangladesh: Law and Practice

Hartal, Mobile Court and Rights of the Accused in Criminal Trial: A Scrutiny of the Mobile Court Act, 2009

Public Interest Litigation: A Functional Means to Ensure Social Justice

Dowry and the Legal Protection of Women: Bangladesh Perspective

Role of Bangladesh Legal Aid and Services Trust (BLAST) in the Field of Legal Aid: An Analysis

Juvenile Justice Administration in Bangladesh: A Critical Analysis

Mental Torture against Women in Bangladesh: Realities, Perceptions and Legal Responses

Conflict of Laws and Its Impact on Child Labour Issues: Bangladesh Perspective

ISSN 1991-8976

Rajshahi University Law Journal

Volume 07 2010

Published by

Dean

Faculty of Law

University of Rajshahi

Rajshahi - 6205

Bangladesh



Faculty of Law

University of Rajshahi

Rajshahi University Law Journal 2010

Editorial Board

Editor

Dr. M Anisur Rahman

Dean, Faculty of Law, R.U.

Member

Dr. M. Habibur Rahman

Professor, Department of Law and Justice, R.U.

Dr. M Rabiul Hossain

Professor, Department of Law and Justice, R.U.

Dr. Md. Ahsan Kabir

Associate Professor, Department of Law and Justice, R.U.

Dr. Md. Hashibul Alam Prodhan

Associate Professor, Department of Law and Justice, R.U.

Dr. Md. Zulfiquar Ahmed

Assistant Professor, Department of Law and Justice, R.U.

Dr. Shahin zohora

Assistant Professor, Department of Law and Justice, R.U.

Rajshahi University Law Journal 2010

Faculty of Law
University of Rajshahi

Volume 07 2010

Published by

Dean

Faculty of Law

University of Rajshahi

Rajshahi - 6205, Bangladesh

© Reserved by the Publisher

Cover Design & Printed by

Md. Ariful Islam

Text Dot Com (TDC)

Farmgate, Motihar, Rajshahi-6212

Cell: 01711-951377

Printed At

Mohanagor Printing & Packaging Press

Kumarpara, Rajshahi.

Subscription Rates

For Individuals: Tk 100.00 US\$ 20 (without postage)

For Organisation: Tk 150.00 US\$ 30 (without postage)

[Published in March 2012]

Rajshahi University Law Journal 2010

Authors' Name	Article	Page
Dr. Zulfiquar Ahmed	Changes and Reforms of Value Added Taxes (VAT) and its Application in Bangladesh: An Analytical Study with Special Reference to the Finance Acts	1-18
Muhammod Shaheen Chowdhury	Encountering Food Safety Challenges in Bangladesh: Law and Practice	19-38
Tapos Kumar Das	Hartal, Mobile Court and Rights of the Accused in Criminal Trial: A Scrutiny of the Mobile Court Act, 2009	39-58
Md. Rabiul Islam	Public Interest Litigation: A Functional Means to Ensure Social Justice	59-82
Md. Rafiqul Islam	Dowry and the Legal Protection of Women: Bangladesh Perspective	83-90
Dr. Md. Hashibul Alam Prodhan	Role of Bangladesh Legal Aid and Services Trust (BLAST) in the Field of Legal Aid: An Analysis	91-118
Dr. Md. Hashibul Alam Prodhan & Dr. Md. Ahsan Kabir	Juvenile Justice Administration in Bangladesh: A Critical Analysis	119-140
Nasrin Rahman & Dr. Md. Ahsan Kabir	Mental Torture against Women in Bangladesh: Realities, Perceptions and Legal Responses	141-158
Md. Sahal Uddin	Conflict of Laws and Its Impact on Child Labour Issues: Bangladesh Perspective	159-168

Conflict of Laws and Its Impact on Child Labour Issues: Bangladesh Perspective

Md. Sahal Uddin*

Introduction

Child Labour is simply the most severe form of child exploitation and child abuse in Bangladesh. Working children as a socio-economic group, happens to be the most disadvantaged of all since they are forced to work for a livelihood by dint of sacrificing their childhood as well as their future for bare survival of their family.¹ Of the estimated 16 million children in Bangladesh aged 10-14, over 6.8 million are working children. 41% of this group is girls. Children are engaged in over 300 different types of work of which 49% are considered harmful to their physical and/or mental health. Intolerable forms of child labour, as categorized by ILO, are domestic service, slavery or near slavery, hazardous occupations and sexual exploitation. All of these forms are practised in Bangladesh. Although law prohibits labour by children, including forced or bonded labour, the practice widely occurs. Enforcement of existing laws regarding prohibition of child labour is inadequate.²

Child labour continues to increase due to population growth, dire poverty in rural areas and migration from rural to urban areas due to poverty, land erosion, inheritance laws and break-up of families. Child labour is a chronic problem that should be addressed because it is-

- i) a child right issue
- ii) a public health issue, and
- iii) a basic education and literacy issue

A coordinated approach to the child labour situation is not evident. The root cause of child labour run deep and require a long-term approach to effectively impact. Organizations that have been active in Bangladesh in this sector include the ILO³ and UNICEF⁴ that perform their activities through the medium of education and skill

* Assistant Professor, Department of Law and Justice, University of Rajshahi, Rajshahi, Bangladesh.

¹ [http://www.bangleerights.net/html/child labor .htm](http://www.bangleerights.net/html/child%20labor.htm) last accessed on 13/07/2011

² [http://www.usaid.gov/bd/files/child labour](http://www.usaid.gov/bd/files/child%20labour) last accessed on 11/07/2011

³ International Labour Organization

⁴ United Nations Children's Emergency Fund

training. Some NGOs⁵ offers smaller programme training child labourers in specific industries and in the non-formal sectors.⁶

Definition of Child

The Children Act, 1974, defines children as a person under the age of sixteen years, and when used with reference to a child sent to a certified institute or approved home or committed by a court to the custody of a relative or other fit person means that child during the whole period of his detention notwithstanding that he might have attained the age of sixteen years during that period.⁷ On the other hand child means a person who has completed fourteen years of age⁸ and adolescent means a person who has completed fourteen years but not completed eighteen years of age.⁹ Again, adult means a person who has completed eighteen years of age.¹⁰ These are the legal segments in determining labourers in terms of age limits. According to the National Policy of the Children of Bangladesh any one who is seventeenth years of age is a child.¹¹ United Nations¹² Convention on the Rights of the Child, 1989¹³ declares that anyone who is below the age of eighteen years is a child.¹⁴ Bangladesh ratified the CRC in August 1990 marking children's right to life, survive and development on the national agenda. Despite this number of outdated legislation, inadequate policies and poor services continue to jeopardize the rights of the children.¹⁵ There is no comprehensive national legislation governing the rights of the children in Bangladesh. Provisions relating to children are spread across various laws, many of which predate the CRC. Consequently, provisions are not always consistent with the rights outlined in the CRC.¹⁶ In Bangladesh the pioneering Children Act of 1974 along with the Children Rules, 1976 is the only legislation specifically addressing child. However, this law deals only with children in need of protection and children

⁵ Non Governmental Organizations

⁶ *ibid*

⁷ Section 2(f), *The Children Act, 1974*

⁸ Section 2(63) *Bangladesh Labour Act, 2006*.

⁹ Section (8) *Bangladesh Labour Act, 2006*

¹⁰ Section 2(36) *Bangladesh Labour Act, 2006*

¹¹ Shahabuddin Nipu and M. Rabiul Alam Khan (ed) *Sangbad Paribixman* 2005, (Mass-line Printers, 1/15, Humayun Road, Dhaka, 2006) 115

¹² Hereinafter called as UN

¹³ Hereinafter called as CRC

¹⁴ Article 1 of the CRC

¹⁵ <http://www.unicef.org/bangladesh/children-4878.htm> last accessed on 27/04/2011

¹⁶ *ibid*

in conflict with the law, often without making a clear distinction between the two groups. The Act makes the children the objects of its provisions rather than the holders of rights. This enactment formulates primarily, the appropriate normative and legal procedure for proper custody, protection and treatment of children. Secondly the Act provides for a mechanism for the trial and punishment of such children who may come into conflict with criminal laws.¹⁷ Thus it is evident that the Act does not deal with labour matters of the children.

Causes of Child Labour in Bangladesh

Causes of child labour in Bangladesh can be categorized as

- i) Supply Factors, and
- ii) Demand Factors

Supply Factor

Poverty is the most important factor responsible for the prevalence of child labour in Bangladesh. About 80 million people live below the poverty line in Bangladesh. Poor household badly need the money that their children earn. They commonly contribute around 25% of family income. Since poor households spend the bulk of their income on food, the earnings of working children are critical to their survival.

Parent's perceptions greatly influence their children's participation in the labour force. The education system of the country in general does not provide poor and disadvantaged children with any immediate prospects of better job and higher levels of income. The curriculum followed in schools is hardly perceived to be capable of meeting the practical needs of poor families. Naturally, poor parents fail to appreciate the long-term value of education. In many cases the male children of the household are expected to help the father in the field and the female children the mother with the household work. Moreover, parents consider their children's employment in certain occupations like the engineering workshop as a rare opportunity to learn employable skills. To them, it is an alternative education with much more practical value than the traditional primary education.

In some areas of the country the expenditure on primary level students represents one third of the entire income of a typical poor family, though most families have more than one third of the school going age. Many children are therefore, forced to work to pay for their own education.

Emergencies often contribute to an increase in the supply of child labour. Bangladesh happens to be a land of chronic natural calamities. Floods, cyclones and riverbank erosion render many people homeless and helpless every year. Low-income families

¹⁷ Malik, Shahdeen, *The Children Act, 1974: A Critical Commentary*, Save the Children UK, Dhaka, 2004, p. 22.

have little margin to cope with any such disaster. They also find it very difficult to deal with the distress resulting from abandonment or divorce or the injury or illness of an adult member of the household. As a result trapped early in the world of work children of such families become the worst victims of any kind of disaster natural or man made.

Demand Factors

The lower cost of employing child workers and the irreplaceable skills provided by them are often cited to explain the demand for child labour. Although there is validity in the first argument, the second does not hold water. In all the industries that rely heavily on child labour most of the tasks performed by children are also performed by adults working along side with them. Clearly children do not have irreplaceable skills. The other factors responsible for the demand of child labour seem to be non-economic. Employers are tempted to hire child labour because children are much less aware of their rights and most unlikely to get organized in trade unions. They are also most trustworthy, more willing to take orders and do monotonous work and less likely to be absent from work. Children's lower absenteeism rate is immensely valuable for employers in the informal sector where workers are employed on a daily basis and the employers must ensure the presence of a full contingent of workers each day.

Other Causes of Child Labour in Bangladesh

Economic impoverishment is another main cause of child labour in Bangladesh.¹⁸ Poverty ridden family cannot afford to carry the educational expenses because they are poor and pass their days in hardship. So parents or guardians feel reluctant to send their children to school. Under such circumstances parents consider their children better to assist their profession or engage in any other job to supplement their family income. On the other hand, the under-privileged children not going to school and the drop out children from the school involve themselves in various occupations. The employers, owners, managers and concerned authorities prefer to engage children at work as they can easily be exploited in working hours with minimum wages.

The socio-economic adversity also affects the child labour situation in Bangladesh. In case of death of a head of a household the family finds it very difficult to meet the basic needs, let alone children's education. In case parent get separated, their children face extreme hardship in managing bread and butter. Nevertheless, poverty stricken families, usually show less interest in adopting family planning measures, which ultimately turns a family large in size with lot of sufferings in maintaining the family.

¹⁸ National Child Labour Policy, 2010

Moreover, widespread unemployment, social insecurity and resource security are the underlying factors of migration from rural to urban areas. Natural calamities like, riverbank erosion, floods, droughts, storms, tidal surges and earthquakes drive children towards greater risk of being engaged in physical labour.

Due to little learning, poverty and lack of awareness many parents consider education as a non-gainful activity and they lose their patience to continue their children's education for a continuous period of 10-15 years. Child labour is also increasing due to non-availability of education materials, lack of opportunity for education and indifferent attitude of parents regarding the negative impact of child labour. Due to the culture of excessive dependence on the domestic help and conventional way of living in urban life even the attentive pupils of rural areas are picked up and brought to the towns for domestic work.

Child Labour Situation in Bangladesh

In childhood when children are supposed to go to school with books, papers, pencils and play with their friends many children have to work for their family livelihood in Bangladesh.¹⁹ When a poor father becomes a victim of the scourge of persistent poverty it is impossible for him to keep his children safe, cuddled and bonded with family by parental care. In this juncture once dislodged from the family children become one of the masses of the society. Some of them start selling their labour as workers in hotel –restaurant, factory, workshop and as domestic workers. Besides, children are also engaged in load carrying in the market, job of a porter, begging, rickshaw pulling, pulling of handcrafts, *bidistucking* etc. Some turn into street children being unable to manage a job. Despite possessing all the childlike attributes a significant number of them become rootless and ruthless because they are disintegrated from their families and nobody owns them as pleasing human beings. Eventually they are deprived from all opportunities of proving themselves as good citizens. Another depressing side of child labour in Bangladesh is that some children are lured from their villages into towns and cities and often trafficked abroad where girls are compelled to be engaged in prostitution and pornography while boys get involved in many anti-social and illicit activities.²⁰

Wages for Child Labour and Working Hours

Although child labour is prohibited in Bangladesh like many other countries of the world, the employers are still interested in employing children as they can be engaged longer hours in exchange of pittance in the name of wages. In most cases, working children have to be satisfied either with only subsistence or the minimal wages. Until the child labour is entirely eliminated from Bangladesh an interim

¹⁹ National Labour Policy, 2010

²⁰ *ibid*

arrangement can be made of fixing national minimum wages for children and the adolescents engaged both in the formal and informal sectors.²¹

National Laws on Child Labour

Work is a right, a duty and a matter of honour for every citizen who is capable of working, and every one is supposed to be paid for his work on the basis of the principle "from each according to his abilities to each according to his work."²² The state can make special provisions for the benefit of the children.²³ Besides, Articles 11,14,15,16,17,18 and 19 of the Constitution of Bangladesh constituting the fundamental principles of state policy have laid emphasis on ensuring compulsory primary education for the children as well as adopting special measures for the children who are physically and mentally challenged. The Constitution has guaranteed the fundamental rights of citizens in Articles 27-44. The Government of Bangladesh through the Ministry of Labour, Employment and Expatriate Welfare has reviewed all fragmented laws related to child labour with a view to fixing a uniform age for admission and to prohibit their engagement in hazardous occupations. According to the Labour Act, 2006, the minimum age for admission to normal works is 14 years and 18 years for hazardous works.²⁴ Further light works for children between the ages of 12-14 years are defined as non-hazardous work that does not impede education.²⁵

Other laws prevailing in Bangladesh that define the rights and protections of children are—

- i) The Children Act, 1974 and Children Rules, 1976.
- ii) The Bonded Labour Act, 2006
- iii) The Suppression of Violence against Women and Children Act, 2006 and
- iv) The Compulsory Primary Education Act, 1990.

Besides, Birth and Death Registration Act 2004²⁶ is a major safeguard for the protection of the rights of children. This Act has made it compulsory to register the birth of a child, which would resolve the future complexity relating to the determination of the age of child.

The National Children Policy, 1994 focuses on the attainment and protection of rights of children, definition of children, age of the child, the extent of his/her rights

²¹ *ibid*

²² Article 20(1) of the *Constitution of Bangladesh*.

²³ Article 28(4) of the *Constitution of Bangladesh*

²⁴ Section 34, *Bangladesh Labour Act, 2006*

²⁵ Section 44, *Bangladesh Labour Act, 2006*

²⁶ Act XXIX of 2004

childhood, guardianship, protection of the child's property, provision of protection for children in civil and criminal proceedings and in legal custody. The National Child Policy of 2010 also focuses on the same things with update modifications.

International Labour Organization and United Nations Conventions

In 1919, the signatory nations to the Treaty of Versailles established the ILO in recognition of the fact that conditions of labour exist involving such injustice, hardship and privation to large number of people as to produce unrest so great that the peace and harmony of the world are imperiled. To tackle the situation the newly founded organization established a system of international labour standards for keeping the labour rights in a proper standard all over the world. For that purpose ILO formulated hundreds of Conventions and as a signatory party the provisions of those Conventions are also binding upon the Government of Bangladesh.

After independence Bangladesh has ratified a number of 33 Conventions. Among them the following Conventions are directly related to child labour. The Conventions are:

- i) UN Convention on the Rights of the Child
- ii) ILO Conventions on the Worst forms of Child Labour (No.182)
- iii) ILO Night Works of Young Persons (Industry) (Convention No.6)
- iv) ILO Night Works of Young Persons (Industry Revised) (Convention No.90)
- v) ILO Minimum Age (Trimmers and Stockers) (Convention No.5)
- vi) ILO Minimum Age (Industry Revised) (Convention No.59)
- vii) ILO Forced Labour Convention (No. 29)
- viii) ILO Abolition of Forced Labour Convention (No.105)

National Policies and Programmes on Child labour

As a result of various research studies there was awareness of child labour in 1990's within the government and civil society and several initiatives to combat the child labour problem were taken by the government of Bangladesh. In 1990 Bangladesh became a signatory to the UN Convention on the Rights of the Child. In the same year Bangladesh passed the Primary Education Act in 1993. It initiated the compulsory primary education system for children aged 6 years and above. At the same time the Government adopted the National Children Policy and formulated the first National Plan of Action (NPA) for children ²⁷(1991-1996).

On the expiry of the 1st NPA for the children the government formulated the 2nd NPA for the period of 1997-2002 and thereafter the 3rd NPA for the period of 2005 to 2010. 3rd NPA for the children is more positive in the sense that it has been

²⁷ Hereinafter Called as NPA

formulated through consultations held nationwide in Districts and Divisions where children had the opportunity to raise their concerns, analyze and prioritize issues that affect their life.²⁸ It visualizes the establishment of the Department of Children Affairs within the Ministry of Women and Children Affairs and an independent Child Rights Commission.²⁹ However, NPA for children is based on a “needs” rather than a “Rights” approach, and hence it lacks the urgency and the commitment that go with the latter. It sounds more like a well-meaning document than a hard-hitting and realistic national agenda on the children of Bangladesh.³⁰

The government of Bangladesh under the auspices of Ministry of Women and Children Affairs formulated the National Child Policy in 1994 outlining the areas for intervention for protecting the rights of children and ensuring their healthy development in every respect. One of the principal objectives of the policy is to harmonize all child development activities in the country with the provisions of the CRC. Preservation of the legal rights of the children in national, social and family context is one of the aims of the National Child Policy, 1994.³¹ This policy states that the purpose of existing judicial system would be to reform the misguided children³² and visualizes the establishment of National Children Board (Jatiyo Shishu Parishad).³³

In collaboration with the World Food Programme (WFP) the government started the Food for Education Programme in 1993 with the aim to attract poor children and their families to primary education. With the setting up of Primary and Mass Education Division in 1992 and the Directorate of Non-formal education in 1996 the government introduced another initiative to tackle the high drop out and low attendance rates in the formal school system.

In March 2001, the government ratified ILO Convention No.182 and that year the Ministry of Labour and Employment initiated the development of National Policy on child labour. The United Nations (UN) Plan of Action for children (2004-2009) addresses the issue of the worst forms of child labours and provides information on planned interventions for the next five-year period.

²⁸ Ahuja, Anupam and Ibrahim, Md., *An Assesment of Inclusive Education in Bangladesh*, UNESCO Dhaka, 2007, p. 15.

²⁹ Government of the People's Republic of Bangladesh, *National Plan of Action for children 2005-2010*, p. 79.

³⁰ Ahuja, Anupam and Ibrahim, Md., *An Assesment of Inclusive Education in Bangladesh*, UNESCO Dhaka, 2007, p. 19.

³¹ Government of the Peoples Republic of Bangladesh, *National Child Policy 1994*, Chapter 4

³² Government of the Peoples Republic of Bangladesh, *National Child Policy 1994*, Chapter 5

³³ Government of the Peoples Republic of Bangladesh, *National Child Policy 1994*, Chapter 7

The Ministry of Labour, Employment and Expatriate Welfare has also implemented a project aimed at the eradication of hazardous labour in Bangladesh. Interventions under this project, which cover areas in Dhaka and Chittagong Municipal Corporations, including non-formal education and skill training, force working children and micro credit support for their guardians/parents.³⁴

The said Ministry established the Child Labour Unit (CLU) under the supervision of the labour wing of the Ministry in 2009.³⁵ The CLU is located in Bangladesh Secretariat under the Ministry headed by a joint secretary (Labour) of the said Ministry the unit is playing catalytic role for ensuring that all child labour policies and interventions are planned and executed integrated and coordinated manner.³⁶ The Unit had taken initiative to launch its recently developed Child Labour Management Information System (CLMIS) on 29th June 2011. On 18 August 2010 the Unit organized a consultation workshop titled "Finalizing the list of Hazardous Work" at Bangladesh Institute of Administration and Management (BIAM) Foundation auditorium in Dhaka. The Unit also arranged a national seminar titled 'National Child Labour Elimination Policy and Next Steps' on 12th June 2011 at the same venue.³⁷

Conflict of Laws and Policies on Child Labour Issues

Laws regarding child labour in Bangladesh are overlapping and somewhere conflicting in determining ages, privileges and other benefits for the children. Proper and adequate legislative framework is essential for protection of children in conflict with the law.³⁸ The world communities criticized the nature of child labour laws in Bangladesh.³⁹ Continuous poverty and persistent social aloofness are the hindrance to the way of strict enforcement of child labour laws.⁴⁰ Although several labour laws are predicated to the elimination of children from workforce many families require extra income from their children.

Bangladesh recognizes the need to lessen the non-conformity of labour laws with practicality, but the level of integration of children in the workforce poses inherent difficulties in phasing out this problem. Children beginning as young as 8 years of age often work in garment factories, food services, hotels and essentially any factory

³⁴ www.ilo.org/legacy/english last accessed on 10/07/2011

³⁵ <http://www.clu-mole.gov.bd> last accessed on 14/07/11

³⁶ *ibid*

³⁷ *ibid*

³⁸ Khan Borhan Uddin Dr., and Rahman Muhammad Mahbubur *Protection of Children in Conflict with the Law in Bangladesh*, Dhaka, 2008p.131

³⁹ See for more details <http://www.bnepbd.com/child labor> last accessed on 10/07/2011

⁴⁰ *ibid*

settings. The initial measures to enforce child labour laws in Bangladesh focus on the creation of a uniform policy explicitly supplying working age and restriction.

Only enactment in Bangladesh will prove inconsequential if the society at large fails to address the concern. To encourage the citizens of Bangladesh to adopt an anti-child labour mentality, develop commitment to education and vocational training need to become reality for the eradication of child exploitation from the country.

Conclusion

In the globalised world affronts to human rights rests not only on the governing nation but every country that handles import, exports or any business transactions with them. Bangladesh embraced the notion that labour laws need to reflect safe practice, specifically for children. Every child preserves the right to enjoy a healthy and natural childhood. Yet, many children in our country are deprived of enjoying this universal right. Children from poverty stricken families are compelled to take Hazardous work for the purpose of raising their livelihoods, which in turn drives them towards an uncertain future. In order to get rid of this situation it is necessary to invest all our efforts and resources for overcoming the situation. In true sense, child labour can never be totally stopped in Bangladesh due to socio-economic pattern. So child labour should be categorized and controlled. For doing so updated laws and policies must be needed.