



Compliance of the Bangladesh Legal Policies with the ILO Convention on the Prohibition of Child Labor

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Abstract. This article aims to discuss the legal policy framework in Bangladesh laws prohibiting child workers. The law has banned children from doing hazardous work, but does not define the term 'dangerous work'. Article 44 of the 2006 Bangladesh Labor Act contradicts the 1973 ILO Minimum Age Convention. In most cases, multinational enterprises (MNEs) agents or supply chains employ children; but foreign investors also have the same responsibility to oversee the local operations of their counterparties. So, it is very important to ensure the protection of the human rights of child workers. Broadly speaking, the findings highlight the need for providing justice, legal certainty and human rights consideration in specifying worker rights such as education, fair wages, limited working hours, safe working conditions, and health protection which must be guaranteed through labor laws.

Keywords: Legal Policy, Labor, Child Labor, ILO Convention, Bangladesh

Abstrak. Artikel ini bertujuan untuk membahas kerangka kebijakan hukum dalam undang-undang Bangladesh dalam pelarangan pekerja anak. Undang-undang telah melarang anak-anak melakukan pekerjaan berbahaya; tetapi tidak mendefinisikan istilah 'pekerjaan berbahaya'. Pasal 44 Undang-Undang Ketenagakerjaan Bangladesh tahun 2006 bertentangan dengan Konvensi Usia Minimum ILO tahun 1973. Dalam kebanyakan kasus, agen atau rantai pasokan perusahaan multinasional (MNEs) mempekerjakan anak-anak; tetapi investor asing juga memiliki tanggung jawab yang sama untuk mengawasi operasi lokal rekanan mereka. Jadi, sangat penting untuk memastikan perlindungan hak asasi manusia pekerja anak. Secara garis besar, temuan tersebut menyoroti perlunya memberikan keadilan, kepastian hukum dan pertimbangan hak asasi manusia dalam menetapkan hak-hak pekerja seperti pendidikan, upah yang adil, jam kerja yang terbatas, kondisi kerja yang aman, dan perlindungan kesehatan yang harus dijamin melalui undang-undang ketenagakerjaan.

Kata kunci: Kebijakan Hukum, Perburuhan, Pekerja Anak, Konvensi ILO, Bangladesh



1. Introduction

Humans are social beings who, of course, need each other. Human needs are related to various human abilities. Farmers need the ability of a tailor to meet their clothing needs. On the other hand, a tailor depends on farmers to fulfill their food needs. Human needs and abilities then have a fairly complex relationship with each other. To regulate the relationship so that it can run well enough and not harm each other, it is necessary to have legal rules that function to create mutual happiness.

Work becomes an absolute for human life to fulfill their needs. However, not everyone gets a decent and age-appropriate job. For many families around the world, asking younger children to help with homework creates many benefits for children. They grow in self-esteem while learning the necessary life skills: how to clean their rooms, do laundry, cook food, and tend the garden. But in poor communities, millions of children work simply because their survival depends on it. When a family is very poor, often young children are forced to work to support themselves or supplement household income. Imagine a five-year-old going to bed hungry with no hope of tomorrow's food unless they work.

The United States has several lines of defense to protect workers' rights. For example, the U.S. Department of Labor was founded in 1913 to promote the well-being of all job seekers, wage earners, and retirees.¹ The Fair Labor Standards Act of 1938 established a minimum wage and minimum age for young workers. Bangladesh's national child labor laws protect educational opportunities and prohibit the employment of children in unsafe workplaces. But around the world, the standards are different.² The distinction between a child working and crossing the line into child labor is not very clear in non-Western cultures. For example, 71% of child labor consists of agricultural work, which includes fishing, forestry, livestock grazing, and aquaculture – all skills for survival.

Protection of the Rights of the Child, seen from its history, has had its genealogy since the beginning of the treaty, the Magna Carta (1215), which is the

¹ Licht, Walter. "How the Workplace Has Changed in 75 Years-Dramatic Developments in the Economy, in Technology, and in the Labor, Force Have Required Changes in Working Conditions and Standards." *Monthly Lab. Rev.* 111 (1988): 19.

² Bourdillon, Michael FC, Deborah Levison, Ben White, and William Myers. *Rights and wrongs of children's work*. Rutgers university press, 2010.

English Constitution that mandates individual rights. Individual rights, known as the bill of rights, contain children's rights. The United Nations Convention on the Rights of the Child came from this genealogy in 1989. This convention regulates what must be done by the state so that every child can grow up as healthy as possible, go to school, be protected, have their opinions heard, and be treated fairly.³ Then how can the convention above and the reality of the world currently experiencing, especially Bangladesh, be brought together? What steps can each individual take to improve the current reality?

2. Results and Discussion

2.1. Child Labour

Another issue regarding human rights violations for workers including child labour. Bangladesh is a densely populated country where around 1.2 million workers are child labourers.⁴ Unfortunately, the reality is that most children are forced to work in order to maintain or support their families or just to survive. They are even willing to do risky or dangerous work, knowing that it can lead to death.⁵ Many of them hide their real age where there is an age limit, like in the garment sector. Due to their lack of skills and maturity, they are constantly abused and exploited; they receive low wages and do not pay attention to working hours, safety, security, etc. Just to survive, they left school at a very early age, without finishing high school.⁶

The ILO Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour' (No. 182), 1999, states that employing child labour is illegal. According to article 3 of the convention, child

³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

⁴ International Labour Office. *World employment and social outlook: Trends 2015*. Geneva: International Labour Organization, 2015.

⁵ Saha, Hillol, and Takmina Kamal. "Rights of the child worker of Bangladesh: An appraisal." *Asian Journal of Multidisciplinary Studies* 6, no. 2 (2018): 85-92.

⁶ Strolin, Jessica S., Mary McCarthy, and Jim Caringi. "Causes and effects of child welfare workforce turnover: Current state of knowledge and future directions." *Journal of Public Child Welfare* 1, no. 2 (2006): 29-52; Lamothe, Josianne, Amélie Couvrette, Gabrielle Lebrun, Gabrielle Yale-Soulière, Camille Roy, Stephane Guay, and Steve Geoffrion. "Violence against child protection workers: A study of workers' experiences, attributions, and coping strategies." *Child abuse & neglect* 81 (2018): 308-321.

labour includes “all forms of slavery, forced or compulsory labour, compulsory recruitment in armed conflict; use and procurement for prostitution and the production of pornography and pornographic performances; use or procurement for illicit activities such as the production and trafficking of drugs; and above all work in work that is inherently dangerous to the health, safety, and morals of children.” The preamble to the convention requires member states to take the immediate and comprehensive actions necessary to eliminate child labour through national legislation. As a result, the Bangladeshi government has followed the convention’s directives and included provisions regarding child labour.

The 2006 BLA (section 34) states, “no child shall be employed or permitted to work in any occupation or establishment.” Article 35 also states that on behalf of the child, parents or legal guardians cannot make an employment agreement with the employer. Section 44 of the Act stipulates a minimum of 14 years for a child to be accepted into work; but allows that a child over the age of 12 may be employed in light work which does not pose a potential threat to his physical and mental development or hinder his education. The Law prohibits children from doing hazardous work; but does not define the term ‘dangerous work’. However, article 44 contradicts the 1973 ILO Minimum Age Convention.

So, it is very important to ensure the protection of the human rights of child workers. Due to economic and survival needs, they work, but rights such as education, fair wages, limited working hours, safe working conditions, and health protection must be guaranteed through labour laws. It is not enough just to make or amend laws; implementation is more important. In most cases, multinational enterprises (MNEs) agents or supply chains employ children; but foreign investors also have the same responsibility to oversee the local operations of their counterparties. MNEs should lend a helping hand to eliminate child labour in host countries such as Bangladesh and participate in child labour development programs. We must remember that educated and healthy child workers will become skilled workers in the future, significantly contributing to the economy.

2.2. Discrimination in Employment and Occupation

Regarding discrimination in employment and remuneration, there are two ILO conventions. First, Article 1(1) of the ILO Discrimination (Employment and Occupation) Convention 1958 states that all forms of discrimination in employment and occupation are illegal. Second, the 1951 Equal Remuneration Convention (article 1(b)) requires equal pay or wages for work regardless of

sexuality. According to the 1958 convention, discrimination includes “any distinction, exclusion or preference based on skin colour, race, sex, religion, and national or social origin, which results in nullifying or impairing equality of opportunity and treatment of persons in employment or occupation. In addition, the prohibition of discrimination involves equal treatment in terms of access or recruitment, termination of employment, assignment of duties, and enjoyment of equal rights and opportunities at work such as salaries, benefits, promotions, and so on.”

In addition, article 2(d) of the ILO Declaration on Fundamental Principles and Rights at Work 1998 recognizes equality in treatment as a fundamental labour right. In accordance with this convention, all member states must realize, promote and respect these basic labour rights and ratify them into national Law, in addition to the 1951 and 1958 conventions. In some respects, Bangladesh, as a member of the ILO, has adopted these three conventions concerning remuneration, treatment in employment and equal opportunities. For example, Article 29(1-2) of the 1972 Constitution of the People’s Republic of Bangladesh recognizes “equal opportunities for all citizens in any occupation or in public office and denounces all forms of discrimination in employment on the grounds of religion, race, caste, sex, and nationality.” Although the article mentions a public office, it does not explain whether it includes a private office or a company. In addition, the Constitution does not have clear provisions in this regard. The government of Bangladesh should consider this void or error in article 29 (1-2).

With regard to equal pay in the workplace, article 345 of the 2006 BLA states that “in determining wages for each worker, the principle of equal pay for male or female workers for work of the same nature or value must be followed, and there should be no discrimination made in this case on the basis of sex.” This section focuses on discrimination only on gender but ignores other discriminatory reasons such as religion, race, nationality, or ethnicity. For example, a foreign national may be employed under the skilled labour category by MNEs with higher remuneration than the local workforce. This type of discrimination also occurs against women when hiring or promoting them. This legal loophole contrasts with ILO conventions, the Bangladesh Constitution, and international standards. Therefore,

discriminatory practices on sexual equality and other grounds in employment can be limited by applying a strong legal framework or amendments to the 2006 BLA.⁷

2.3. Discrimination in Employment and Occupation

According to article 23(2-3) of the Universal Declaration of Human Rights 1948 and articles 7(a-b), (d) of the International Covenant on Economic, Social and Cultural Rights 1966, it is a basic worker's right to receive a minimum wage. in the workplace with various benefits such as vacation, accident and injury compensation, maternity leave and so on. The 1970 ILO Minimum Wage Setting Convention sets out the factors to be considered when setting minimum wages for workers. Article 3 (a-b) contains factors such as "the needs of workers and their families; cost of living; social security benefits; the relative standard of living of other social groups; and above all, the requirements for their economic development." Article 4 obliges ILO member states "to establish a minimum wage setting system adapted to national conditions; and requirements consisting of representatives of employers and workers to determine salaries and make adjustments from time to time."

To comply with the above-mentioned ILO conventions, pursuant to section 139 of the 2006 BLA, a Minimum Wage Council was established, consisting of employers and workers' representatives. Section 139 of the Act authorizes the Council to consider the factors in article 3(a-b), including other relevant factors, and propose minimum wage levels for workers from time to time. Section 141 mentions various considerations issues, such as "cost and standard of living; production costs, productivity; the economic price of the product; business capabilities; the economic and social conditions of the country and locality concerned; and other relevant factors." From these words, it can be seen that business interests are more guarded than workers. Another criticism is that the minimum wage set by the Council is not sufficient to keep the cost of living in the city down. In September 2018, the Bangladeshi government announced a new minimum wage for garment workers, setting a monthly minimum wage of 8,000

⁷ Rashid, M. M., and Mohammad Ashrafur Rashid. "Health and Safety Environment of Readymade Garment Industry in Bangladesh: A Case Study of Zaheen Knitwears Limited." *Manarat International University Studies* 4, no. 1 (2015): 71-82; Afrin, Samina. "Labour Condition in the Apparel Industry of Bangladesh: Is Bangladesh Labour Law 2006 Enough?." *Development Country Studies* 4, no. 11 (2014).

Tk (95 US Dollars).⁸ As a result, the workers became displeased and then started protesting against it in the street.

As noted earlier, due to the Bangladesh Export Processing Zones Authority (BEPZA) Act 1980, the 2006 BLA does not apply to the Export Processing Zones (EPZ). According to section 1 of Instruction No. 2 BEPZA Law 1980, employers are empowered to set minimum wages for workers; and apart from increasing wages and welfare, unions are prohibited from interfering in any form.⁹ In this Law, there is no provision to comply with ILO conventions when setting minimum wages for EPZ workers. The government approved a new salary structure for workers in Export Processing Areas, increasing the minimum salary by 45.83 percent to \$70 (Tk 5,600) from \$48 (Tk 3,350) per month, effective December 1, 2013.¹⁰ Given the current standard of living, it's not enough to survive in the city.

One of the reasons for investing in Bangladesh is the low labor costs.¹¹ To maximize profits, MNEs are often reluctant to increase workers' wages. They directly or indirectly put pressure on the government or the Wage Council not to increase wages significantly. As a result, in most cases, expenditures to meet the primary needs of workers, commodity prices, house rents, and economic inflation are not taken into account. Therefore, with respect to the payment of (minimum) wages, regardless of location, every business industry should be placed within the same legal structure, i.e., there should be no difference between workers in the EPZ and other areas of Bangladesh. All workers must be treated equally regardless of area, and the 2006 BLA must apply to all.¹²

In addition to the problems above, cases of discrimination on gender sometimes create other biases, namely the neglect of other discriminatory things

⁸ Ahonen, S. "New Bangladesh Minimum Wage." Sustainability Agents (2018, December 18th). Accessed from <https://sus-a.com/index.php/new-bangladesh-minimum-wage/2018/>.

⁹ Islam, M. Zohuru, and Sununta Siengthai. "Quality of work life and organizational performance: Empirical evidence from Dhaka Export Processing Zone." In *ILO Conference on Regulating for Decent Work, Geneva*, pp. 1-19. 2009.

¹⁰ The Daily Star. "New pay structure for EPZ workers approved." (Thu Dec 26, 2013). Retrieved from <https://www.thedailystar.net/new-pay-structure-for-epz-workers-approved-3987>.

¹¹ Shah, Nahid. "Determinants of foreign direct investment: A study on Bangladesh." *Journal of Economics and Sustainable Development* 4, no. 18 (2013): 11-17.

¹² Munshi, Farzana. "Do Minimum Wages Reduce Employment? Some Empirical Evidence from Bangladesh." *The Bangladesh Development Studies* 41, no. 3 (2018): 57-72.; Rubya, Tamanna. "The ready-made garment industry: An analysis of Bangladesh's labor law provisions after the Savar Tragedy." *Brooklyn Journal of International Law* 40, no. 2 (2015): 7.

such as religion, race, nationality, or ethnicity. A foreign national is sometimes or even frequently employed under the skilled labor category by MNEs with higher remuneration than the local workforce. This type of discrimination also occurs against women when hiring or promoting them. Steps to change this discriminatory attitude are not enough just to make or amend laws, and implementation is much more important.

Educated and healthy child workers will become skilled workers in the future, which will significantly contribute to the economy. Unfortunately, the reality is that most children are forced to work in order to maintain or support their families or just to survive. They are even willing to do risky or dangerous work, knowing that it can lead to death. Many of them hide their real age where there is an age limit, like in the garment sector. So, many child workers still have not been equipped with sufficient skills to improve their welfare.

3. Conclusion

The issue of employment and worker welfare should be of particular concern to the Bangladeshi government, especially when it comes to child labour. Child labor should get more attention because it is often the object of abuse and exploitation that leads to exploitation. All workers must be treated equally regardless of area, and the 2006 BLA must apply to all. Although the government has approved a new salary structure for workers in Export Processing Areas, increasing the minimum salary by 45.83 percent to \$70 (Tk 5,600) from \$48 (Tk 3,350) per month, effective December 1, 2013,¹³ however, given the current standard of living, it was not enough to survive in the city. Article 4 obliges ILO member states “to establish a minimum wage setting system adapted to national conditions; and requirements consisting of representatives of employers and workers to determine salaries and make adjustments from time to time.” Therefore, the updated salary increase should have a regular evaluation cycle to suit the workers’ daily needs.

¹³ The Daily Star. “New pay structure for EPZ workers approved.” (Thu Dec 26, 2013). Retrieved from <https://www.thedailystar.net/new-pay-structure-for-epz-workers-approved-3987>.

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