

## **LEGISLATION ON CHILD LABOUR : INTERNATIONAL AND DOMESTIC PERSPECTIVES**

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### **1. Introduction**

Concern for children is a relatively recent phenomenon, which progressively gained global recognition. The issue of child labour occupies a special position within the discourse on children's rights. The perceived problem of child labour has been addressed primarily by protective legislation nationally and internationally. The standard response to child labour is to advocate the total eradication of the practice through legislative interventions. This is premised on the understanding that since children constitute a vulnerable and easily exploitable category of human beings, their protection could only be ensured by their complete removal from the labour market by introducing minimum age standards for employment. The present paper revisits the legal standards in both the international and domestic contexts that impinge specifically on children in labour.

### **2. International Law and Child Labour**

The concept that children possess rights and are entitled to special benefits finds clear expression in international law. Apart from its utility in enforcing children's rights, international law is useful in providing policy makers with concrete guidelines for incorporating children's needs and entitlements within the policy and legislative frameworks of state parties. By addressing various complexities associated with children's rights, like child labour, international law underscores its commitment to lend children a visibility in the international legal arena.

#### **2.1 Standard Setting by the League of Nations and the United Nations**

The realisation that children constitute a special category of human beings that require special attention has resulted in the adoption by the United Nations of various international legal

documents that specifically addressed *inter alia* aspects of child labour.

### **2.1.1 The Declaration of the Rights of the Child, 1924**

The Declaration of the Rights of the Child, 1924 was adopted by the Fifth Assembly of the League of Nations where the 'rights of the child' were first coined in an international legal text. Contrary to the later restrictive stand against child labour, a child, under the Declaration, was given the right to work. This is evident from the provision, which states that

*The child must be put in a position to earn livelihood and must be protected against every form of exploitation.*

The contrast between the provisions in the 1924 Declaration and the later enactments reveals a gradual shift in the realm of child rights, not only in respect of social and cultural rights, but also in terms of restraints over children in gainful occupations.

### **2.1.2 The Declaration of the Rights of the Child, 1959**

The Declaration of the Rights of the Child 1959 purported to grant a series of benefits and entitlements and provided that every child shall be protected from all forms of neglect, cruelty and exploitation. Article 9 of the Declaration stated that

*No child shall be employed before an appropriate minimum age and in no case shall it be permitted to engage in any occupation that may prejudice its health and education or interfere with its physical, mental and moral development.*

The Declaration further provided in Principle 2 that the child shall enjoy special protection and shall be given opportunities and facilities, by law or any other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.

### **2.1.3 International Covenant on Economic, Social and Cultural Rights, 1966**

The rights granted in the 1959 Declaration were reaffirmed in the International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly in 1966. Article 10(3) of the

Covenant stressed that

*Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States also should set age limits below which the paid employment of child labour should be prohibited and punishable by law.*

### **2.1. 4 UN Convention on the Rights of the Child, 1989**

The Convention on the Rights of the Child (CRC) is a comprehensive document covering major aspects of children's rights. Article 32 of the Convention specifically deals with children's work. It provides that

*State Parties recognize the right of a 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, moral or social development. Furthermore, State Parties should take appropriate legislative, administrative, social and educational measures to ensure the implementation of this article.*

An analysis of this provision reveals that the Convention requires State Parties to establish a minimum age(s) for employment, appropriate regulation of working hours and conditions and appropriate punitive and other measures for infringement of this Article.

### **2.2. ILO Standards on Child Labour**

While the role of the United Nations in laying down standards for protecting children's rights and working children is indeed significant, the most extensive initiatives in this field has been taken by the International Labour Organisation (ILO) which has been campaigning against the practice and growth of child labour since its inception in 1919. ILO has, over the years, adopted a series of Conventions, supplemented by Recommendations, that set standards for the employment of children in specific occupations spread across particular sectors. These instruments prescribe

minimum ages for admission to employment on the basis of a particular economic sector or the whole of it, accompanied by exceptions in given situations. This sectoral approach enabled states to ratify the Conventions that suited their own particular circumstances.<sup>1</sup>

ILO's policy regarding child labour operates from two interrelated yet distinct objectives. The first is the effective elimination of child labour while the second is the protection of working children from exploitation and detrimental working conditions.<sup>2</sup> Nations are required to adopt a series of legal and economic measures under the first objective. Recognising that states may require some time to realistically attain the first objective, ILO, in its second objective, suggests that countries should meanwhile provide mechanisms that would offer working children with some measure of protection.

### **2.2.1 The Minimum Age Convention (No. 138) and Recommendation (No.146), 1973**

The most pertinent of the ILO Conventions relating to working children is the Minimum Age Convention (No.138) and Recommendation (No.146) of 1973. The Convention requires ratifying states to pursue a national policy designed to ensure the effective elimination of child labour and to progressively raise the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young people.<sup>3</sup> It requires every ratifying state to specify a basic minimum age for employment or work which shall not be less than the age of completion of compulsory schooling or in any case, not

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1. Swepston, Lee, 'Child Labour: Its Regulation by ILO Standards and National Legislation' in *Child Labour: A Briefing Manual*, ILO, Geneva, 1986, pp.19-32, at p.21.
  2. Bouhdiba, Abdelwahab, *Exploitation of Child Labour*, final report of the Special Rapporteur to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, United Nations, New York, 1982, p.28.
  3. Article 1, *Minimum Age Convention* No.138, 1973.

less than 15 years. However, concessions are made for developing economies where the minimum age may be set at 14 years initially.<sup>4</sup> However, urgent steps are recommended for raising this age as soon as practicable.<sup>5</sup>

Recommendation No. 146 suggests that measures should be taken to supplement and enforce a national policy that is referred to in Article 1 of the 138 Convention. The Recommendation further provides that high priority should be given to planning for and fulfilling the needs of children and youth in national development policies.<sup>6</sup> It also calls for special measures devised for alleviating poverty and ensuring full employment of the family in order to render economic activities by children unnecessary. Social welfare measures for the protection of children should also be ensured.<sup>7</sup>

Bangladesh has however, *not* ratified the Minimum Age Convention No.138, the rationale being that the age standards in its domestic labour laws are set in conformity with relevant ILO instruments and therefore, there is little point in ratifying the 138 Convention. However, the Bangladesh Government is increasingly realising that it is critical to ensure that there is a minimum age limit for children to be engaged in major categories of work and to this end to ratify ILO Convention 138.<sup>8</sup>

Nevertheless, Bangladesh has ratified other ILO Conventions that prescribe minimum ages for admission to various occupations. They are as follows:

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4. Article 2, *ibid.*
  5. Paragraph 7, *Recommendation* No.146.
  6. Paragraph 1, *ibid.*
  7. Paragraph 2, *ibid.*
  8. See observation of Dr. Kamal Uddin Siddiqui, Principal Secretary to the Prime Minister, Government of Bangladesh in his *Keynote Paper* presented at the *Seminar on Rehabilitation of Working Children In Asia*, 12 March 2003. Dhaka organised under the auspices of the Asian Cooperation Dialogue (ACD), p.9.

### **2.2.2 Convention Concerning the Night Work of Young Persons Employed in Industry (No.6), 1919**

This Convention applies to children in industrial undertakings that include *inter alia* mines, quarries, shipbuilding, construction and maintenance of buildings, sewer, drains, ducts, railways, roads, bridges, waterways, installation of telephonic and telegraphic systems, electrical and gas work, transport of passengers or goods by road, railway or inland waterway and handling of goods at docks, wharves, warehouses and quays.<sup>9</sup> It prohibits the employment of young persons below the age of 18 years during the night in any private or public industrial undertaking of the kind described earlier.<sup>10</sup> For the purposes of this Convention the term 'night' signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning.<sup>11</sup>

However, where the undertaking is run by members of the family young persons below the age of 18 years may be employed during the night.<sup>12</sup>

### **2.2.3 Convention Fixing the Minimum Age for the Admission of Young Persons to Employment as Trimmers and Stokers (No.15), 1921**

The provisions of this Convention apply to work done by young persons on training ships, vessels propelled by other means than steam and as trimmers and stokers on vessels engaged in coastal trade.<sup>13</sup> For the purposes of this Convention the term 'vessel' signifies all ships and boats engaged in maritime navigation

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9. Article 1, *Convention Concerning the Night Work of Young Persons Employed in Industry (Revised)*, No.5, 1919.

10. Article 2 (1), *ibid.*

11. Article 3 (1), *ibid.*

12. Article 2 (1), *ibid.*

13. Article 3, *Convention Fixing the Minimum Age for the admission of Young Persons to Employment as Trimmers and Stokers* No.15, 1921

whether privately or publicly owned. It excludes ships of war.<sup>14</sup>

The Convention prohibits the employment of young persons under the age of 18 years on vessels as trimmers and stokers.<sup>15</sup>

Where a trimmer or a stoker is required in a port where young persons over 18 years are not available, then young persons who are at least 16 years old may be employed provided they are declared to be medically fit. In such a situation it shall be necessary to employ two sixteen year olds instead of one.<sup>16</sup>

In order to facilitate the enforcement of this Convention every shipmaster is required to maintain a register of all the persons employed on his vessel who are under the age of 18 years along with the dates of their births.<sup>17</sup>

#### **2.2.4 Convention Concerning the Compulsory Medical Examination of Children and Young Persons Employed at Sea (No.16), 1921**

This Convention deals with employment of children and young persons on ships and boats whether privately or publicly owned, engaged in maritime navigation. It excludes ships of war.<sup>18</sup> This Convention provides that the employment of any child or young person under 18 years on any vessel shall be conditional on the production of a medical certificate attesting fitness for such work signed by a doctor having prior approval of a competent authority. This requirement may however, be dispensed with in respect of children and young persons employed on family owned vessels.<sup>19</sup> In urgent cases the competent authority may permit a young person below the age of 18 years to embark on a voyage without undergoing the required medical examination, provided that such

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14. Article 1, *ibid.*

15. Article 2, *ibid.*

16. Article 4, *ibid.*

17. Article 5, *ibid.*

18. Article 1, *Convention Concerning the Compulsory Medical Examination of Children and Young Persons Employed at Sea*, No.16, 1921.

19. Article 2, *ibid.*

an examination shall be conducted at the first post at which the vessel calls.<sup>20</sup>

Every child or young person so employed shall be subjected to repeated medical examinations at an interval of not more than one year. A certificate attesting the fitness of the concerned child or young person shall follow each examination.<sup>21</sup>

### **2.2.5 Convention Fixing the Minimum Age for Admission of Children to Industrial Employment (Revised) (No.59), 1937**

This Convention applies to children employed in industrial undertakings that include *inter alia* mines, quarries, shipbuilding, construction and maintenance of buildings, railways, roads, bridges, waterways, installation of telephonic and telegraphic systems, electrical and gas work, transport of passengers or goods by road, railway or inland waterway and handling of goods at docks, wharves and quays.<sup>22</sup> The Convention states that children under the age of 15 years shall not be employed in any of the aforesaid undertakings, whether, private or public.<sup>23</sup> The Convention further states that in case of employment which, by their nature or the circumstances in which they are carried out, are dangerous to life health or morals of the persons employed therein, national laws shall either prescribe an age higher than 15 years or empower an authority to prescribe such a higher age for the admission thereto of young persons or adolescents.<sup>24</sup>

However, national laws may permit such children to be employed in undertakings in which only their family members work except where such work, by their very nature and circumstances in which they are carried out, are detrimental to children's life, morals and health.<sup>25</sup>

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20. Article 4, *ibid.*

21. Article 3, *ibid.*

22. Article 1, *Convention Fixing the Minimum Age for Admission of Children to Industrial Employment (Revised) No.59, 1937.*

23. Article 2 (1), *ibid.*

24. Article 5 (1), *ibid.*

25. Article 2 (2), *ibid.*



In order to facilitate the enforcement of this Convention, every employer in this kind of industrial undertaking is required to maintain a register of all persons below the age of 18 years employed by him including the dates of their births.<sup>26</sup>

### **2.2.6 Convention Concerning the Night Work of Young Persons Employed in Industry (Revised) (No.90), 1948**

This Convention superseded the Convention of 1919 following proposals for partial revision of some of the provisions of the earlier document. The present Convention also applies to young persons employed in industrial undertakings that include amongst others, mines, quarries, extraction of minerals, manufacturing, cleaning and repairing material, shipbuilding, transmission of electricity, building and civil engineering and demolition work and transport of passengers or goods by road, railway or waterways and handling of goods at docks and quays.<sup>27</sup>

This Convention prohibits the employment of young persons under the age of 18 years during the night in any private or public industrial undertaking of the above nature.<sup>28</sup> In case of vocational training or apprenticeship in specified occupations that require to be carried on continuously, the competent authority, after consultation with the concerned employers and workers organisations, shall authorise the employment in night work by young persons who have attained the age of 16 years but are under the age of 18 years. The young persons so employed under 16 years shall be given a rest period of at least thirteen consecutive hours between two working periods.<sup>29</sup> For the purposes of this Convention the term 'night' refers to a period of at least twelve consecutive hours. In the case of young persons below 16 years this period shall include the interval between ten o'clock in the

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26. Article 4, *ibid.*

27. Article 1, *Convention Concerning the Night Work of Young Persons Employed in Industry (Revised)*, No.90, 1948.

28. Article 3 (1), *ibid.*

29. Article 3 (2) and (3), *ibid.*

evening and six o'clock in the morning.<sup>30</sup>

National laws or regulations may exempt from application of this Convention employment or work that is not deemed to be harmful for young persons. This exemption primarily applies to young persons employed in family undertakings in which parents and their children are employed.<sup>31</sup>

### **2.2.7 Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182) and Recommendation (No. 190), 1999**

This is the latest of ILO Conventions concerning child labour. The Convention focuses on what it terms as the 'worst forms of child labour'. For the purposes of this Convention the term 'worst forms' refers to

- (a) all forms of slavery or slavery-like practices, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (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.<sup>32</sup>

The provisions of Recommendation 190 supplement those of the Convention and are to be applied in conjunction with them. The

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30. Article 2 (1) and (2), *ibid.*

31. Article 1(3), *ibid.*

32. Article 3, *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, No.182, 1999.

Recommendation states that in determining the types of work specified in Article 3 (d) of the Convention consideration should be given, *inter alia*, to:

- (a) work which exposes children to physical, psychological or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined places;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) work under particularly difficult conditions such as work for long hours during the night or work where the child is unreasonably confined to the premises of the employer.<sup>33</sup>

Member states are urged to take all necessary measures required to implement the provisions of this Convention including the application of penal and other appropriate sanctions. Member states are called on to recognise the importance of education in removing children from exploitative working conditions and reintegrating them into society. Special emphasis has been placed on girls.<sup>34</sup>

Recommendation 190 urges state parties to undertake programmes of action in consultation with relevant government institutions and employers' and workers' organisations. The Recommendation stresses on the need to take into consideration the views of the children directly affected by worst forms of child labour, their families and other concerned groups.<sup>35</sup> The Recommendation further requires member states to establish appropriate mechanisms

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33. Clause 3, *Recommendation No. 190*.

34. Article 7, *Convention No. 182*.

35. Rule 2, *Recommendation No. 90*.

to monitor the implementation of Convention 182 and impose penalties for violation of national provisions for the elimination of the worst forms of child labour.<sup>36</sup>

The evolution of Convention 182 targeting harmful forms of child labour is indicative of the implicit acceptance by the world community that there are forms of work that are not necessarily harmful for children and that children may be supported in those activities that are not detrimental to their physical and mental development. This approach recognises and appreciates children's potential to participate in economic development of the country in meaningful ways and views them as an important resource in any development intervention. This Convention has significantly digressed from the stereotypical universal standards that usually assume a somewhat patronising attitude about the proper roles of children. The tacit endorsement of the validity of children's economic needs and choices will help engender an environment in which the best interests of the child are neither disregarded nor taken for granted. The validation of children's rights thus will create opportunities for children to be protected, cared for and allowed to participate in their own cultural and economic contexts. In the circumstances, if the majority of working children indeed feel that they have both the right to work as well as to be protected from potentially harmful and exploitative work, then responsive policy interventions will certainly be required to support them in their working lives.<sup>37</sup>

Evidently, the general aim behind international law on child labour is to prevent children under a certain age from working and where they are eligible for work, to protect them from harm and exploitation. Although international law makes concessions in respect of implementation having due regard to the level and pace of development of state parties, it is inflexible regarding the child's best interests and inherent dignity that states are obliged to ensure irrespective of their level of economic development.

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36. Rules 8 and 13, *ibid.*

37. Moore, Karen, 2000. *op.cit.*, p. 545.

It is often contended that the views upheld in many of the international legislation on child labour are often at odds with what the children want out of their lives. This stems from the fact that most of the international legislation on the subject is premised on a fixed notion of childhood that is largely determined by biological and psychological needs of the child rather than their culture or society. The presumption that the conception of rights is often tied up with cultural values is not recognised during the formulation of international human rights standards. Consequently, they do not always account for all the needs children may have or all the situations in which they find themselves. A globalised view of children and childhood effectively circumscribe the understanding of the different capacities and competencies perceived to be associated with childhood in cross-cultural contexts. However, the usefulness of international law in protecting children's rights can in no way be undermined. International law has in essence strived to transform rhetoric into reality by granting children substantive rights like other individuals.

### **3. Domestic Legislation on Child Labour: The Bangladesh Context**

Bangladesh has a number of laws within its domestic jurisdiction that impinge directly on the employment or work of children. Many of these laws are products of the colonial era, while others, though promulgated at later periods, nevertheless require to be updated in many respects. A brief review of the relevant laws is given below highlighting aspects that relate directly to the working child.

#### **3.1 The Mines Act, 1923**

This Act prohibits the employment or the presence of children in a mine or any part thereof which is underground.<sup>38</sup> The Act designates a child as a person who has not completed his fifteenth year.<sup>39</sup> However, the Act permits persons who have completed their seventeenth year to be employed in a mine provided that a

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38. Section 26, *The Mines Act* 1823.

39. Section 3 (c), *ibid.*

qualified medical practitioner grants them a certificate attesting to their fitness.<sup>40</sup> Moreover, the hours of work for such persons must be so fixed as to allow an interval of rest of at least 12 consecutive hours including at least seven consecutive hours between 7 p.m. and 7 a.m.<sup>41</sup> This provision however, does not apply to persons employed as apprentice or those receiving vocational training.

### **3.2 The Children (Pledging of Labour) Act, 1933**

The Children (Pledging of Labour) Act primarily prohibits the pledging of the labour of children by way of an agreement. Such an agreement shall be void.<sup>42</sup> The Act defines a child as a person who is under the age of 15 years. Agreements made by parents or guardians themselves or by any person with parents and guardians to cause or allow the services of a child to be utilised in employment in return for some payment or benefit fall within the ambit of this Act.<sup>43</sup> If the conditions under which the agreement is made are detrimental to the child the agreement shall be void. Consequently, parties involved in such a deal are punishable with fine under the law.<sup>44</sup>

### **3.3 The Employment of Children Act, 1938**

This Act prohibits the engagement of children in specific occupations particularly those concerning the transport of passengers, handling of goods and processing work. The Act defines children as persons who are below the age of 15 years and restricts their employment in the transport of passengers and handling of goods by road, railway or any sea-port.<sup>45</sup> The Act further provides that children up to the age of 17 years must not be employed in the aforementioned activities unless the periods of work are so fixed as to allow intervals for rest of at least 12

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40. Section 26 A, *ibid.*

41. Section 26 B, *ibid.*

42. Section 3, *The Children (Pledging of Labour) Act 1933.*

43. Section 2, *ibid.*

44. Sections 4-6, *ibid.*

45. Section 3 (1), *The Employment of Children Act 1938.*

consecutive hours including at least seven consecutive hours between 7 p.m. and 7 a.m.<sup>46</sup>. The Act makes different provisions for children engaged in processing work. It allows children below the age of 12 years to undertake processing activities and identify the workshops where children of this age group may work.<sup>47</sup> The Act also specifies the hours of work that children over the age of 15 years and under the age of 18 years may undertake. The Act uses the terms young persons and adolescents interchangeably to denote this particular age threshold.

### **3.4 The Tea Plantation Ordinance, 1962**

This Act provides that no child under the age of 12 years shall be allowed to work in any tea plantation.<sup>48</sup> However, children above the age of 12 years and adolescents between the ages of 15 and 17 years may be permitted to work in tea plantations provided that they are granted a certificate attesting to their physical fitness.<sup>49</sup> Children are not allowed to work otherwise than between 6 a.m. and 7 p.m.<sup>50</sup> Any contravention of the provisions of this Act is punishable with fine or imprisonment or both.<sup>51</sup>

### **3.5 The Factories Act, 1965**

The Act states that a child who has not attained the age of 14 years shall not be allowed to work in any factory.<sup>52</sup> It also provides that a child above the age of 14 years and below 16 years and an adolescent who is 16 years old but not yet 18 may be permitted to work in a factory subject to the granting of a medical certificate attesting to his fitness.<sup>53</sup> The Act restricts the working hours of children and adolescents to five hours a day. Further, they are

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46. Section 3 (2), *ibid.*

47. Section 5, *ibid.*

48. Section 21, *The Tea Plantation Labour Ordinance 1962.*

49. Section 23, *ibid.*

50. Section 22, *ibid.*

51. Section 35, *ibid.*

52. Section 66, *The Factories Act 1965.*

53. Section 67, *ibid.*

prohibited from working in a factory between 7 p.m. and 7 a.m.<sup>54</sup> A child is prohibited from undertaking work at two factories simultaneously on the same day.

No young person shall be allowed to work at any machine unless he has received sufficient training at operating it or works under the supervision of someone having sufficient knowledge and experience and has been duly warned of the connected dangers.<sup>55</sup>

No woman or child is allowed to work in any part of the factory for pressing cotton in which a cotton opener is at work.<sup>56</sup> Similarly, the lifting, carrying or moving by hand or on the head of anything is only permissible if it does not exceed 35 pounds in the case of boys and 30 pounds in the case of girls.<sup>57</sup>

Where the Government is convinced that any operation carried on in a factory seriously jeopardises the health of its workers by exposing them to risks of bodily injury, poisoning or any disease, it may make rules specifying the operation and declaring it to be hazardous thereby restricting the employment of women, adolescents or children in such occupations.<sup>58</sup> Rule 83 to the Act accordingly describes certain operations that would fall within the purview of such hazardous occupations.

Every manager of a factory is required to maintain a register of children who work there containing name, date of birth, nature of work, allotted shifts and medical certificate.<sup>59</sup>

### **3.6 The Shops and Establishment Act, 1965**

According to this Act a child is a person who is below the age 12 years.<sup>60</sup> It prohibits the employment of a child in any shop or establishment that employ five or more persons.<sup>61</sup> However, a

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54. Section 70, *ibid.*

55. Section 25, *ibid.*

56. Section 29, *ibid.*

57. Rule 48 of the Factories Rules 1979.

58. Section 87, *ibid.*

59. Section 72, *ibid.*

60. Section 2 (b), *The Shops and Establishment Act 1965.*

61. Section 22, *ibid.*



young person who is below the age of 18 years is permitted to work in an establishment as long as he does not work more than seven hours a day or forty- two hours per week. Any contravention of this Act is punishable with fine or imprisonment or with both.

### **3.7 The Children Act, 1974**

The Children Act was enacted in order to consolidate and amend the law related to the custody, protection and treatment of children and trial and punishment of youthful offenders. Although the Act primarily deals with children in conflict with the law there are provisions that pertain to working children. Sections 34-43 of Act deal with various aspects of child exploitation that range from begging, exposure to drugs and liquor, brothels and seduction.

The Act also imposes penalties for exploiting child employees. It provides that whosoever secures a child ostensibly for the purpose of menial employment or for labour in a factory or establishment, but exploits the child for his own ends, withholds his earnings or lives on it, shall be punishable with fine or imprisonment or with both.<sup>62</sup> The Act further provides that whosoever secures a child ostensibly for any of the purposes mentioned above but exposes the child to the risk of seduction, sodomy, prostitution or other immoral conditions shall be similarly punishable with fine or imprisonment or with both.<sup>63</sup>

### **3.8 Draft Labour Code**

Many of the existing labour laws in Bangladesh have been enacted periodically in response to specific issues emerging from relations between labour and industry. Many of these laws have become redundant with the changing socio-economic scenario in the country. In the circumstances, the Government felt the need to consolidate existing labour laws into a Labour Code in order to eliminate the various contradictions and inconsistencies and reconcile with the commitments made over the years to conform to international labour standards. Based on this the Government formed the National Labour Commission in 1992 to examine

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62. Section 44 (1), *The Children Act 1974*.

63. Section 44 (2), *ibid*.

existing labour laws and prepare a comprehensive Labour Code. The Commission duly prepared a draft Labour Code and submitted it in 1994, at the same time tabling a bill titled the Labour Code for enactment.

The Commission in its report recognised the need to consolidate various laws relating specifically to children into a uniform labour standard that would be applicable across the board. It acknowledged the difficulty in reconciling the varying age limits prescribed in different laws to denote a child and conceded that in normal circumstances no person below the age of 18 years should be allowed to undertake adult work processes. The Commission recommended that for purposes of labour and industrial relations a person who has completed his fourteenth year but has not completed his eighteenth year shall be regarded as an *adolescent* and a person who has not attained the age of 14 years shall be deemed to be a *child* and as such, shall not be admitted to work. The Commission however, made an exception in respect of children above the age of 12 years but below 14 years by allowing them to do light work only if necessary provided that it does not in any way endanger their mental and physical development or interfere with their education. It also stresses that children above 12 years will be allowed to do light work only if the hours of work are such, that if they are school going, they would not interrupt their school attendance.

The draft Labour Code spells out standards in respect of working hours, working conditions and physical fitness for adolescents and children. It prohibits the making of any agreement by parents/guardians to allow the services of any child to be utilised in any employment. In case there is confusion as to whether a person is a child or an adolescent, in the absence of a formal certificate attesting to his age, a certificate from a registered medical practitioner approved by the Inspector shall be deemed to be conclusive proof of his age.

A reading of the draft Labour Code reveals that it primarily concentrates on consolidating all relevant labour laws under a single umbrella legislation. The initiative is indeed a laudable one. However, although the exercise was undertaken in 1992-1994 the

Code still awaits approval by the Parliament in order for it to become law. Given that a considerable period of time has elapsed since the consolidation of the draft document it would be useful if reforms and amendments were incorporated into relevant contexts of labour and industrial relations including provisions relating to working children. The provisions on children in the draft document have not greatly departed from the original legal texts as is evident from the reinforcement of the age limits as prescribed by the Factories Act of 1965 for admission to work.

An analysis of the domestic laws described above reveal that provisions in the domestic laws relating to working children are in many ways on par with ILO Conventions in the area. Just as relevant ILO Conventions set different age standards for admission to work on the basis of the nature of the occupation, the laws of Bangladesh demonstrate a similar trend. Consequently, children are defined varyingly in the laws that apply to different labour sectors. Although some of the laws use the terms child, young person and adolescent to indicate different life phases, the provisions are not always consistent with the age of majority as set either in international legal standards, e.g., the CRC or in domestic legislation, e.g., The Majority Act. The domestic laws, like the ILO Conventions, also make concessions with regard to children working in family undertakings or as apprentices receiving vocational training. The existence of these provisions presents a double standard that makes it difficult to define exploitation and identify work processes that are to be construed as 'exploitative'.

One of the fundamental reasons why children cannot be adequately protected by the laws is the general absence of birth certificates. Although the birth of every child is required by law to be compulsorily registered, its practice is rare in Bangladesh. This makes it impossible to determine with any accuracy the actual age of a child. This is particularly pertinent in the case of marginalised children who are generally devoid of any record of their birth and whose parents can, at best cite memorable national events or natural disasters to indicate the possible birth dates of their children.

The domestic laws have built-in mechanisms for implementation.

Most of them provide standards for the employment of children and require routine inspection of the workplaces by a competent authority. Penalties are set for the non-conformity with any of the prescribed requirements. While the enforcement mechanisms may be in place the tangible implementation of the same leaves much to be desired. Records and registers on working children are inadequate, medical facilities are unavailable, working conditions are not child-friendly and inspections are few and far between, that is, if not totally absent. In places where inspectors do appear, it is common for them to collude with employers and make out an excellent inspection report for a price without so much as peeking into a room. Finally, many of the laws are archaic and are in urgent need of amendments and reforms in order to conform to the needs of the changing society.

#### **4. Concluding Observations**

The occurrence of child labour has, over the years, instigated widespread debates about the morality of the practice. While acknowledging that child labour is often an unavoidable evil, particularly in developing nations, the general consensus is that the phenomenon essentially exploits children and steals from them the joys of a carefree childhood. These perceptions have in turn activated the development of measures in both international and domestic contexts for the protection of working children. Accordingly, numerous declarations, conventions and laws have evolved that primarily aim at restricting/eliminating child labour. Although child labour currently features prominently amongst the internationally recognised core labour standards, there is difficulty in enforcing child labour laws as much of the work performed by children is in the informal sector which is outside the ambit of labour legislation. The fact that dynamics contributing to economic exploitation of children tend to vary between the developed and the developing countries also adds to the difficulties in enforcing child labour standards. Nonetheless, efforts must be geared towards ensuring a robust system for rights and standards for working children that would not only promote social justice and human rights but also contribute in concrete ways to the broader processes of social and economic development.