The Dhaka University Studies, Part-F Vol. XIV (1) : 37-56, June 2003

THE ILO CONVENTIONS ON FORCED LABOUR : A LEGAL REVIEW OF ITS IMPACT AND IMPLICATIONS IN BANGLADESH

Dr. Borhan Uddin Khan

1. Introduction

Abolition of forced labour was by no means an entirely new field for the ILO. As an extension to the activities of the League of Nations in administering trust territories and promoting the abolition of slavery, the ILO found itself called upon to deal specifically with this problem.[1] Consequently, the ILO adopted the Forced Labour Convention, 1930 (No. 29); and two Recommendations supplementing it – the Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35), and the Forced Labour (Regulation) Recommendation, 1930 (No. 36).[2]

When ILO adopted Convention on Forced Labour in 1930, it was mainly concerned with the position in the colonial countries and certain independent States at a similar stage of development, and the Convention therefore deals mainly with the forms of forced labour for economic purposes employed in those countries.[3] The Convention however, applies to all the member states of the ILO as cases covered by the Convention could also arise elsewhere. At a later stage, the existence of forced labour as a means of political coercion attracted attention at the international level. As a result

---

1. Ghebali, V., *The International Labour Organisation: A Case Study on the Evolution of U.N. Specialised Agencies*, Dordrechet 1989, p.87.
2. For details see, ILO, *Report of the Ad Hoc Committee on Forced Labour*, (Studies and Reports, New Series, No. 36) Geneva, 1953.
3. ILO, *The ILO and Human Rights*, (Report of the Director- General (Part I) to the International Labour Conference, Fifty-second session, 1968), Geneva 1968, p.41.

of which the Abolition of Forced Labour Convention (No.105) was adopted in 1957, aiming at abolishing forced labour. In this paper we will endeavor to analyze the Conventions in the light of legal regime of Bangladesh.

2. An Overview of the ILO Conventions on Forced Labour

The Forced Labour Convention, 1930 (No. 29), is the first international instrument in which the ILO endeavored to lay down a set of standards for the protection of a fundamental human right i.e. prohibition of forced labour. The Convention requires the suppression of the use of forced or compulsory labour in all its forms. Article 2(1) defines forced or compulsory labour as " all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The Forced Labour Convention, 1930 (No. 29), requires the suppression of the use of forced or compulsory labour in all its forms.

The Convention provides specifically for the exemption of certain forms of compulsory service. These forms, which would otherwise have fallen within the general definition of "forced or compulsory labour", are thus excluded from the scope of the Convention.

The 1930 Convention exempts from its provisions "any work or service exacted in virtue of compulsory military service laws for work of a purely military character". It further exempts from its provisions "any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country". Three exceptions specifically provided for in the Convention refer to certain forms of work or service which constitute normal civic obligations: compulsory military service, work or service required in cases of emergency and minor communal services. Other examples of normal civic obligations are compulsory jury service and the duty to assist a person in danger or to assist in the enforcement of law and order.

The Convention (No. 29) exempts from its provisions "any work or service exacted from any person as a consequence of a conviction

in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations". Unlike the other exceptions provided for in the Convention which are concerned with cases of calling up persons for the purpose of performing particular work or services, this case relates to the consequences of punishment imposed as a result of the conduct of the individuals concerned.

The Convention (No. 29) further exempts from its provisions "any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population. The concept of emergency – as indicated by the enumeration of examples in the Convention – involves a sudden, unforeseen happening calling for instant counter–measures. To respect the limits of the exception provided for in the Convention, the power to call up labour should be confined to genuine cases of emergency. Moreover, the duration and extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation.

The Convention (No. 29) also exempts from its provisions "minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services".

As has already been noted, that the Forced Labour Convention, 1930 aims at the suppression of forced labour generally, whereas

Convention, 1957, provides for the abolition of forced or compulsory labour in a defined number of cases.

The 1957 Convention indicated that, in the cases considered, forced or compulsory labour must be abolished in all its forms. As the Convention contains no definition, the ILO Committee of Experts has considered that the definition of the concept of forced labour provided in the Convention on forced labour (No.29) is generally valid and can thus serve also to determine what constitutes "forced or compulsory labour" within the meaning of the 1957 Convention – namely, "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

According to Article 1 of the Abolition of Forced Labour Convention (No. 105), member states undertake to suppress and not to use of any form of forced or compulsory labour: (a) as a means of political coercion or educate or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a means of mobilising and using labour for purposes of economic development; (c) as a means of discipline; and (d) as punishment for having participated in strike and (e) as a means of racial, social, national or religious discrimination.

Thus, it is evident that the Convention on Abolition of Forced Labour does not prohibit the exaction of Forced or Compulsory Labour from common offenders convicted, for example; of robbery, kidnapping, bombing or other acts of violence or acts or omissions that have endangered the life or health of others. Although a prisoner may be directed to work under punishment and against his will, the labour in this instance is not imposition as these are permissible under the Convention. Consequently, in most of the cases, labour imposed on person as a consequence of conviction in a court of law will have no relevance to the application of the Abolition of Forced Labour Convention. On the other hand, if a person is in any way forced to work because he holds or has

expressed particular political views, has committed a breach of labour discipline or has participated in a strike the situation is covered by the Convention.

3. Ratification of the Conventions Concerning Forced Labour by the Government of Bangladesh

The government of Bangladesh has ratified the Conventions on Forced Labour i.e., the Forced Labour Convention, 1930 (No.29) and the Abolition of Forced Labour Convention, 1957 (No.105) on 22 June 1972. It may however be emphasised that the Conventions were in force in the territory of Bangladesh since 29 December, 1957 and 5 February, 1960 respectively, as being ratified by the then government of Pakistan.

4. Implications of Ratification of ILO Conventions on Forced Labour

The adoption of international labour standards is not an academic exercise. Its object is to bring about effective and harmonised progress in the national law and practice.[4] One of the factors influencing the effectiveness of standards is the degree to which they are formally accepted by member states.

Whatever effect the unratified Conventions can have in the absence of binding obligations,[5] it is in connection with the formal act of ratification that their impact is likely to be tangible and lasting. This is due to the fact that ratification involves the formal commitment of states to give effect to the Conventions within

---

4. Valticos, N., "The Future Prospects for International Labour Standards" in *International Labour Review*, Vol. 118, 1979, p. 690.

5. On the influence of unratified Conventions, see, Landy, E. A., "The Influence of International Labour Standards: Possibilities and Performance", in *International Labour Review*, 1970. Vol. 101, pp. 561-570; ILO, *The Impact of International Labour Conventions and Recommendations*, Geneva 1976, pp. 11-26.

their territory and it sets in motion the regular supervisory machinery of the ILO.[6]

A state which ratifies a Convention gives an undertaking that it will make its provisions effective as from the date of its entry into force for the country concerned, which is twelve months after the registration of its formal ratification with the Director-General of the International Labour Office.[7] The assumption of obligations under a Convention will have noticeable repercussions at the national level whenever the law or practice of the country needs to be modified in order to ensure compliance with the terms of the instrument. Such modifications may occur in four circumstances: they may precede the decision to ratify; they may be concurrent with it; they may occur during the period between ratification and entry into force; or they may take place when the Convention is already binding. The last mentioned alternative, although unsatisfactory from a legal point of view, none the less represents a case of influence, and one where the effect of ILO standards is liable to be particularly clear-cut.

5. Status of ILO Conventions on Forced Labour in the Domestic Legal Regime

The Constitution of Bangladesh was adopted on 4 November 1972 and came into force on 16 December 1972. Human rights agenda had been in the fore-front of the country's liberation struggle. The country's respect for human rights and fundamental

---

6. For a detailed account of the supervisory machinery of the ILO, see, Valticos, N., *International Labour Law*, Deventer 1979, pp. 225-261; Tikriti, A., *Tripartism and the International Labour Organisation*, Stockholm 1982, pp. 274-333; Samson, K.T., "The Changing Pattern of ILO Supervision", in *International Labour Review*, Vol. 118, 1979, pp. 569-587.

7. International Labour Office is the permanent secretariat of the ILO, and is expressly provided for in the Constitution of the ILO which in Article 2 stipulates: "the permanent organisation shall consist of ... an International Labour Office . . .". For a detailed study on the structure of the ILO, see, Osieke, E., *Constitutional Law and Practice in the International Labour Organisation*, Dordercht 1985, pp. 79-141.

freedom dates back from the Proclamation of Independence of 10 April 1971. The Proclamation, *inter alia* reads ". . . we undertake to observe . . . and to abide by the Charter of the United Nations".[8] The Constitution in its Preamble provides ". . . it shall be a fundamental aim of the state to realise . . . a society in which the rule of law, fundamental human rights and freedom, . . . will be secured for all citizens". Article 11 envisages that the republic shall be a democracy and in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed.[9] Article 25 delineates that the "state shall base its international relations on the principles of . . . respect for international Law and the principles enunciated in the United Nations Charter . . .".[10] Article 145A specifies that "all treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament".

From the above provisions, it is evident that the Constitution is silent on the status of International law upon the domestic legal regime, even though it does make reference to human rights and respect for international law. Accordingly, under the general principles of international law and the municipal legal regime, international treaties can become part of the domestic law in Bangladesh only if they are specifically incorporated in the law of the land. In other words, they are not self-operating in Bangladesh i.e. treaty obligations concluded by Bangladesh cannot *ipso facto* be put into effect unless an enabling legislation is passed or enacted.[11] Further, the Constitution does not contain any specific provision, which obliges the State to enforce or implement international treaties and Conventions including implementation and enforcement of the ILO Conventions on Forced Labour.

---

8. See, 24 Dhaka Law Reports, 1972.
9. For details see, *Constitution of the People's Republic of Bangladesh 1972.*
10. For details see, Ibid, Article 26.
11. See, Rashid, H., *International Law*, Dhaka, 1998, p.23.

6. Constitutional Guarantee Regarding Prohibition of Forced Labour

The Constitution of Bangladesh contains some basic features of which fundamental rights as enumerated in Part III is one. The Constitution guarantees that all existing laws inconsistent with the fundamental rights would be declared, to the extent of inconsistency, void and the state is forbidden to make any laws inconsistent with the fundamental rights.[12] Eighteen fundamental rights have been enumerated in the Constitution of which prohibition of forced labour is one. Article 34 prohibits forced labour which reads as follows:

> All forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

The above provision is not absolute as proviso to article 34 provides:

> Nothing in this article shall apply to compulsory labour –
>
> (a) by persons undergoing lawful punishment for a criminal offence; or
>
> (b) required by law for public purposes.

The Constitution thus, prohibits forced labour but provides provision for compulsory labour under the above mentioned circumstances. The Constitution does not however, define 'compulsory labour', nor is such a definition to be found in any other laws of Bangladesh.

7. Incompatibility of the Legislation vis-a-vis Convention No. 29 : Observations of the ILO Committee of Experts and the Response of the Government and Employers

The ILO Committee of Experts for a number of years has pointed out that certain legal restrictions regarding termination of employment falls with the purview of forced labour with the

---

12. See, Article 26 of the *Constitution of the People Republic of Bangladesh 1972.*

meaning of Convention No. 29.

Under the Essential Services (Maintenance) Act, 1952 (Act No. LIII of 1952) it is an offence punishable with imprisonment for up to one year, for any person in employment (of whatever nature) under the government to terminate his/her employment without the consent of his/her employer, notwithstanding any express or implied term in his/her contract providing for termination by notice.[13] Pursuant to section 3 of the Act, these provisions may be extended to other classes of employment. Similar provisions are contained in the Essential Service (Second) Ordinance, 1958 (Ordinance No. XIV).[14]

The government takes the view that there are sufficient protective measures provided in the labour laws such as the Factories Act, 1965, Payment of Wages Act, 1936, Shops and establishment Act, 1965 and the Essential Services (Maintenance) Act, 1952. In Particular it refers to the provision of notice to be given and wages to be paid in lieu of notice by employers terminating employment of a permanent worker. Further, the government's position on the issue is "temporary restrictions on termination of employment to secure the supply of community services should not be construed as forced or compulsory labour and are permissible under article 9 of the Convention No. 29".[15] In this respect the Committee of Experts takes the view that under article 1, paragraph 1 of the Convention, each member of the ILO which ratifies it undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period; Article 9 of the Convention is part of a whole set of provisions establishing the conditions and guarantees under which, in exceptional cases and with a view to its complete suppression, forced labour could be used during a

---

13. See, Sections 3, 5(1)(b) and 7(1).
14. See, Sections 3, 4(a) and (b) and 5.
15. See, ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*,Report III (Part 1A),Geneva 1998, pp.99-100.

transitional period.[16] Since the Convention, adopted in 1930, calls for the suppression of forced labour within the shortest possible period, to invoke at the current time (73 years after its adoption) that certain forms of forced or compulsory labour comply with one of the requirements of these set of provisions, is to disregard the transitional function of these provisions and contradict the spirit of the Convention.

The position of Bangladesh Employer's Association is no different from that of the government. It considers that under the Essential Services (Second) Ordinance, 1958, the government is empowered to declare certain classes of employment as essential for the maintenance of public order or for maintaining services necessary to the life of the community and is thus permissible under Articles 9 and 10 of Convention No. 29.[17] In this context, the explanation provided by the Committee of Experts in paragraph 67 of its 1979 General Survey on the Abolition of Forced Labour may be mentioned, where it indicated that workers may be prevented in leaving their employment in emergency situation within the meaning of Article 2, paragraph 2(d) of the Convention, i.e., any circumstances that would endanger the life, personal safety or health of the whole or part of the population.[18] Restrictions under the essential services referred to are not limited to such circumstances. The Committee of Experts has also pointed out in paragraph 116 of the same General Survey of 1979 that, even regarding employment in essential services whose interruption would endanger the existence of the wellbeing of the whole or part of the population, there is no basis in the Convention for depriving

---

16. See, Article 1 paragraph 2 and Articles 4-24 of Convention No. 29.
17. See, ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*,Report III (Part 1A),Geneva 1994, pp. 91-92.
18. ILO, *Abolition of Forced Labour*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Geneva 1979, p. 34.

workers of the right to terminate their employment by giving notice of reasonable length.[19] Thus, Article 9 and 10 of the Convention cannot be invoked as a defense as these provisions provide no basis for turning a contractual relationship based on the will of the parties into service by compulsion of law.

8. Certain Allegations and Concerns of Forced or Compulsory Labour within the Meaning of Convention No. 29

The phenomenon of child domestic workers in Bangladesh is complex in nature that has evolved from certain social practices and has remained unchallenged, forming the socio-economic realities of the country. The age of the child domestic workers ranges from 8 to 16. However, if a mother is a domestic servant in a household, often her very young children get drawn into child domesticity before they know of any other lifestyle. Child domestic workers are predominantly female. The tasks expected or demanded of them are open-ended or, at best, ill-defined. Working hours is equally vague, and often remuneration is not discussed clearly and openly. The child domestics' relationship with their employers varies widely. However, in all cases, the employer has total power over all aspects of their lives.

According to the ILO Committee of Experts, the phenomenon of child domesticity in Bangladesh needs to be considered with the situation of domestic workers in general. In this well-developed subculture there are several categories of workers, including the *bandha*, the *chhuta*, skilled, domestics, and the *pichchis*. The *bandha* domestic workers are live-in and full time. '*Bandha*' literally means "tied down". These are servants who are exclusively engaged in one household, having wide-ranging activities, and almost no limit to their working hours. They are provided with accommodation, often within the household. The quality of accommodation depends on the economic conditions and social

---

19. Ibid, pp.57-58.

attitudes of the employer. Depending on gender and age, the range of their work may vary, but they are expected to be involved in every chore, indoor and outdoor. The category of *chhuta,* meaning "non-bound", consists of domestic workers who work part time, do several specific and usually well-defined activities, and have their own households, as do skilled domestics. The *pichchis*, or "tiny ones", have an independent association with the employers. They run various errands for all members of the family and have no other specific or defined responsibilities. Their major problems are the various demands from different members of the family throughout the day. The *pichchis* are made up of comparatively more boys than girls, are live-in servants with food provided, and usually receive no regular cash payments. All child domestics really fall within the categories of *bandha* and *pichchis.*[20]

The child domestics have very wide-ranging activities, which are difficult to classify into well-defined categories. However, one can arrive at a simplified classification of two broad areas: labour intensive tasks and the running of errands. Labour-intensive tasks may stretch over all working hours of the day, and include sweeping, washing, dusting, floor polishing, cooking and helping to cook, grinding spices, washing clothes, etc. As for running errands, child domestics are always on call by every family member to perform any task. These jobs are often tedious, but child domestic workers are expected always to be on their toes. Never be tired, and always on their best behaviour. As these are small and isolated activities, they are never perceived as real work.

The child domestic workers are perceived as servants with endless working hours. It is often alleged that, even when domestic workers have completed their assigned chores, such as washing

---

20. See, ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A),Geneva 1998, p.100.

clothes, cleaning the house, washing kitchen utensils, cooking or grinding spcies, employers still have power over their time. They cannot plan to utilize their 'free' time according to their needs or wishes, because they are always on call for all types of large and small jobs, even fetching a glass of water. They can be called upon at any time throughout the day or night. Even young girls can be awakened in the middle of the night for any type of job, from providing food for unexpected guests to helping care for a sick baby throughout the night. According to the allegations, child domestic workers do not have any regular holidays or any days off. No one recognizes a child domestic's need or right to have any time or means for recreation. Even if the employer's family goes on a holidays, the domestic accompanies them in her usual role.[21]

According to ILO Committee of Experts, there are allegations that no matter what the socio-economic conditions of the employing families, the age of the domestic workers, or the strenuousness of the chores, the workers' daily routine is the same. They wake before anyone else in the household and are the last to go to sleep. When the family goes out on social visits, the employer will offer the services of the domestic worker to the host family, which can be seen as an extension of social courtesy on the part of the guest family. Society sees the children as the property of the employer, and 24 hours a day, 365 days a year, the domestic servant's status remains unchanged. It is also alleged that, from a very impressionable age, domestic workers live within the family, totally devoid of any rights, surrounded by their own loneliness. This is the definition of a child domestic work. In exchange for this life style of duties, they get food, shelter, clothing and treatment depending on the socio-economic status of the employing family, as well as their attitudes and beliefs. The child domestics are often the recipients of all forms of verbal abuse and sometimes even

---

21. Ibid, p. 102.

physical abuse. They are also often under threat of dismissal and being thrown into the street to a vagrant life.[22]

In response to the above allegations, the government representative in the ILO Conference of 1999 indicated that the words '*bandha*', '*chutta*', and '*pichis*' need careful examination. According to him the word '*bandha*', does not mean 'tied town'. '*Bandha*' workers engaged in a household are 'regular or permanent' workers. Such workers have every right to continue or leave work at his/her will and leave the house and accept a job in any other house. According to him, those families who are economically in better conditions can employ such '*bandha*' workers. In addition women, who were divorced, widowed or has no place to stay, accept such work since these jobs provide food shelter clothing etc. Regarding '*chutta*' his observation was as follows: The word '*chutta*' does not mean 'non bound'. They are temporary or part time workers. Such workers come at a particular time at your house and after one-two hours of work leave the house. Then they can go to another house nearby for similar part time work. This means they can earn higher wages.[23]

Regarding '*pichichis*' he observed, *Pichichis* means small boys or girls. Generally their parents have no house and cannot feed them or, for security, keep them in some other house hold. They leave like one of the members of the family. Sometimes the owners of the house send them to school or *Madrasa* (religious education institution). Therefore, they do not fall within the definition of bondage. Parents can at any time withdraw such *Picchchis.*[24]

The government representative then mentioned that it was important to realise why children work as domestic workers,

---

22. Id.
23. ILO, *Report of the Conference Committee*, Geneva, 1999, p.67.
24. Id.

women work as '*bandha*' workers and '*pichchis*' work in houses. When food and shelter are the most important factors, these persons could not consider any other means of survival. In Bangladesh most people are poor, with high population and the problems are of different and multidimensional in nature. Poor families having four/five children find no way but keep their children in the houses of others for food, shelter and security. He therefore recalled that the main cause of child domestic work was poverty. He however, expressed that with the acceleration of economic activities and progress of socio-economic development, poverty would be progressively eliminated and child labour would disappear.[25]

9. Incompatibility of the Legislation vis-a-vis Convention No. 105: Observations of the ILO Committee of Experts and Government Response

In the following paragraphs we will make an effort to assess the incompatibility of the legislation vis-à-vis Convention No. 105.

9.1 The Special Powers Act, 1974

Under sections 16-20 of the Special Powers Act, 1974 penalties of imprisonment may be imposed on persons who commit prejudicial acts or publish prejudicial reports, or who contravene orders for prior scrutiny and approval of certain publications or for the suspension or dissolution of certain associations, and that the punishment under these provisions may involve an obligation to perform prison labour by virtue of section 53 of the Penal Code and section 3(26) of the General Clauses Act 1897. In this context the Committee of Experts explanations given in paragraphs 102-109 and 138-140 of its 1979 General Survey on the Abolition of

---

25. Id.

Forced Labour[26] may be mentioned where the Committee observed that any penal sanctions involving an obligation to perform prison labour are contrary to the Convention when imposed to the established political system, or having contravened a widely discretionary administrative decision depriving them of the right to publish their views or suspending or dissolving certain associations. The Government in its report for the period ending 30 June 2000 has indicated that it has referred the matter before the Law Commission, which is examining the existing laws and will submit recommendations.

In its observation the Committee of Experts has expressed[27] the hope that the Government will take the necessary measures to repeal or amend sections 16-20 of the Special Powers Act, 1974 so as to ensure the observance of the Convention. The Committee also asks the Government to supply information on the work of the Law Commission on that point.

9.2 The Penal Code, 1860

According to the provisions of the Penal Code (Act No. XLV of 1860) prison sentences involving compulsory labour may be imposed under the following sections: sections 124A (brings the Government into hatred or contempt or exciting disaffection towards it); 141-143 (unlawful assemblies); 145, read together with 141 and 127 of the Code of Criminal Procedure (No. V of 1898) (joining or continuing in an unlawful assembly which has been ordered to disperse); 151, read together with section 127 of the Code of Criminal Procedure (joining or continuing any assembly of five or more persons which being likely to cause a disturbance of public peace has been ordered to disperse); 153

---

26. ILO, *Abolition of Forced Labour*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Geneve, 1979 pp. 51-54 and 72-74.

27. ILO, Report of the Committee of Experts 2000.

(promoting feelings of enmity or hatred between different classes of citizens); and 153B (including students to take part in political activity).

The Committee of Experts accordingly, has asked the government to supply details concerning the practical application of the above provisions. The Government noted in its report that there are no compiled data on the issue and that it is not in the position to supply full information on the matter now. The Committee therefore has again requested the Government to supply information on the application in practice of the above provisions, including copies of any court decisions defining or illustrating their scope so as to enable the Committee to ascertain their being applied in a manner compatible with the Convention.[28]

9.3 The Industrial Relations Ordinance, 1969

According to the ILO Committee of Experts, prison sentences imposed for breach of settlement and for failing to implement settlement under sections 54 and 55 respectively of the Industrial Relations Ordinance, 1969, read with section 3 clause 26 of the General Clauses Act 1897, may involve compulsory labour within the meaning of Article 1(c) of Convention No. 105.[29]

The Industrial Relations Ordinance, No. XXIII of 1969, as amended by the Industrial Relations (Amendment Act, 1980), prohibits strikes in public utility services and makes strikes illegal in various other circumstances, such as strikes by unorganized workers (sections 43 and 46(b)], or where the Government has exercised its rights to prohibit any strikes lasting more than 30 days or, before the expiry of 30 days, any strike whose continuance is considered prejudicial to the national interest [section 32(2)]. Strikes are also illegal if they have not been consented upon by

---

28. See, *ILO, Report of the Committee of Experts*, 2000.
29. See, *120 Report of the Committee of Experts*, 2000.

three-quarters of the members of the trade union or federation recognized as collective bargaining agent (section 28 of the 1969 Ordinance, as amended by section 8 of the 1980 Act, read together with sections 22, 43 and 46(1)(b) of the Ordinance). By virtue of section 57 of the Ordinance, participation in any illegal strike may be punished with imprisonment. According to section 3 clause 26 of the General Clauses Act, 1897, such imprisonment may involve an obligation to work. The labour exacted in such a manner is not in conformity with article 1(d) of Convention No. No.105.

9.4 The Control of Employment Ordinance, 1965

Under section 5(2)(h) of the Control of Employment Ordinance, 1965 persons employed or engaged in any essential work[30] may be prohibited from leaving the work or absenting themselves from duty or slowing down or otherwise impeding their output. According to section 13(1) any person guilty of an offence may be imprisoned and according to section 3 clause 26 of the General Clauses Act, 1897 such imprisonment may involve compulsory labour which is contrary to article 1(c) of Convention No. 105.

9.5 The Post Office Act, 1898

According to section 50 of the Post Office Act, 1898 whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post, voluntarily withdraws from the duties of his office without permission or without having given one month's previous notice in writing, shall be punishable with imprisonment. Under section 3 clause 26 of the General Clauses Act, 1897 such imprisonment may involve compulsory labour which is contrary to article 1(c) of Convention No. 105.

---

30. According to section 2(3) of the Control of Employment Ordinance, 1965, "essential work means any work relating to the manufacture, production, maintenance or repair of arms and equipment or other supplies and any other work which the government may, by notification in the official Gazette, declare to be essential work for the purpose of this Ordinance"

9.6 The Bangladesh Merchant Shipping Ordinance, 1983

The Bangladesh Merchant Shipping Ordinance, No. XXVI of 1983, provides under sections 198 and 199 for the forcible conveyance of seamen on board ship to perform their duties, and in sections 196, 197 and 200 (iii), (iv) and (vi) for the punishment, with imprisonment which may involve an obligation to work, of various disciplinary offences, in cases where life, safety or health are not endangered. The ILO Committee of Experts on various occasions[31] requested the Government to review the Ordinance and to indicate the measures taken to bring it into conformity with the article 1(c) and (d) of the Convention. In its report for the year ending June 2000, the Government has indicated that the Ordinance is in the process of review and that the above mentioned provisions will be examined by a tripartite committee.

9.7 The Services (Temporary Powers) Ordinance, 1963

Under sections 2 and 3 of the Services (Temporary Powers) Ordinance, of 1963, the Government may prohibit strikes by employees of the Government or of a local authority, *inter alia*, in the interest of public order, contravention being punishable with rigorous imprisonment involving an obligation to work. This provision of law is not in conformity with article 1(d) of Convention No.105.

10. Conclusion

From the above discussion it is evident that even though under the Constitution of Bangladesh all forms of forced labour are prohibited, there are provisions in various laws under which labour may be imposed amounting to 'forced labour' within the

---

31. See, ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A), 83rd Session 1996, p. 238; 85th Session 1998, p. 294.

meaning of the ILO Conventions. These laws are: The Essential Services (Maintenance) Act, 1952 (Act No. LIII of 1952), The Essential Service (Second) Ordinance, 1958 (Ordinance No. XIV), The Special Powers Act 1974 (Act No. XIV of 1974), The Penal Code 1860 (Act No. XLV of 1860), The Industrial Relations Ordinance, 1969 (Ordinance No. XXIII), The Control of Employment Ordinance, 1965 (Ordinance No. XXXII of 1965), The Post Office Act, 1898, (Act No. VI of 1898), The Bangladesh Merchant Shipping Ordinance, 1983, (Ordinance No. XXVI) and The Services (Temporary Powers) Ordinance, 1963 (Ordinance No II of 1963. It may be recalled that our Constitution guarantees of prohibition against forced labour and Article 26 of the Constitution provides that all existing laws inconsistent with the fundamental rights as provided in Part III shall to the extent of inconsistency become void on the commencement of this Constitution and the state shall not make any law inconsistent with those rights.