

# ELIMINATION OF THE WORST FORMS OF CHILD LABOUR THROUGH LAW IN BANGLADESH: A CRITIQUE

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## 1. Introduction

The elimination of child labour is not a purely legal issue, but rather a socio-legal issue, requiring a pluralistic and not a 'one size fits all' treatment. The fundamental premise of this paper is that, although 'law' has become a dominant mechanism in the global fight against child labour which exists everywhere in various forms and degrees, there are many limits of law vis-à-vis the elimination of the worst forms of child labour' (hereafter WFCL) in Bangladesh and elsewhere.<sup>1</sup>

Given that hazardous work or worst forms of labour harmfully impact the child's health and development, the elimination of the worst forms of child labour has turned out to be a universal concern. The elimination of this evil, however, is not as easy a task as it appears to be, which becomes clear when one looks at the record. Nearly or over 250 million children between 5 and 14 years of age are working world-wide, which is 20% of the total number of children of this age group, while about 45% of the working children are engaged in 'hazardous work'. The picture of working children in Asia is alarming; the region produces about 62% of world's working children.<sup>2</sup> To take the case of Bangladesh, which seems worse than some others, about 6.5 million children (5 to 14 years of age) of the country are working children, which constitutes 16.6% of the total labour force.<sup>3</sup> Of these working children, about 3.2 million are reportedly

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<sup>1</sup> As Banu *et al* comment, "(l)egislation alone has proved insufficient for eradication of child labour in less developed countries". See Banu, Nasim *et al* (1998), below note 9, at p. 86. For a leading study of limits of law, see Allott, Antony N. 1980. *The Limits of Law*. London: Butterworths.

<sup>2</sup> See Bangladesh Bureau of Statistics (2003), below note 4.

<sup>3</sup> Children below the age of 15 constitute 39.9% of the total population, and 19.23% of them are engaged in work. See *UNDP Human Development Report 2006*.

engaged in labour in both rural and urban areas,<sup>4</sup> while about 40% of them are found in 'hazardous' occupations,<sup>5</sup> and approximately 20% in seriously risky or worst forms of labour.<sup>6</sup>

International and national efforts towards eliminating child labour have an old history.<sup>7</sup> Several international instruments and policies seek to address the problem of child labour including the WFCL. Most significant of these instruments have been the United Nations Convention on the Rights of the Child 1989 and the two ILO Conventions, namely, the Minimum Age Convention 1973 (No. 138) and the Worst Forms of Child Labour Convention 1999 (No. 182). These Conventions have basically sought to infuse rights-based arguments into the child labour debates, there being other important dimensions such as economic and social dimensions in the issue of child labour, analyses of which need further improvisation.<sup>8</sup>

In trying to analyse the complex but live issue of WFCL in Bangladesh, the present paper adopts a justice-based and socially relevant approach to the problem. My modest aim here is to revisit the issue with a practical note on the limits of law as the eliminator of WFCL, but renew focus on the role of all duty-holders, especially of the public agencies and non-government organizations.<sup>9</sup>

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<sup>4</sup> See Bangladesh Bureau of Statistics (BBS). 2003. *Report on National Child Labour Survey 2002-03*. Dhaka: BBS. See further Khan, Mohammad Ali. 2001. *Child Labour in Dhaka City*. Dhaka: Hakkani Publishers; and International Labour Office. 2007. *Bangladesh Child Labour Data Country Brief*. Geneva: ILO.

<sup>5</sup> Bangladesh Bureau of Statistics, *id.*

<sup>6</sup> See the *Daily Star*, Dhaka, 10 June 2008.

<sup>7</sup> On international legal efforts in this area see generally, Cullen, Holly. 2007. *The Role of International Law in the Elimination of Child Labor*. Leiden: Martinus Nijhoff.

<sup>8</sup> Rights and economics perspectives have attained the central place in the recent global discourse on labour law. See Davies, A. C. L. 2004. *Perspectives on Labour Laws*. Cambridge: Cambridge University Press.

<sup>9</sup> This is to note that existing Bangladeshi literature in this field predominantly place reliance on the law-tool in eliminating the WFCL. See, among others, Mandal, Gobinda C. and Shima Zaman. 2004. "Child Labour in Bangladesh: Facts and Laws", *The Chittagong University Journal of Law*, vol. 9: 125-42; Rahman, Wahidur. 1996. *Hazardous Child Labor in Bangladesh*. Dhaka: ILO/IPEC and Department of Labour, Government of Bangladesh; and Ahmed, A. and M. A. Quasem. 1991. *Child Labour in Bangladesh*. Dhaka: Bangladesh Institute of Development Studies. For an analysis of different

## 2. WFCL: The Global Legal Regime and Bangladesh's Obligations

### 2.1 *The WFCL Convention*

International efforts in eliminating the WFCL gained momentum in the 1990s. The most notable instrument seeking to achieve this objective is the ILO Convention 182, i.e., the WFCL Convention.<sup>10</sup> According to this Convention, WFCL comprises all forms of slavery, bonded or forced labour, the use or procurement of children for prostitution or for the production of pornography, and work which, "by its nature or the circumstances in which it is worked out, is likely to harm the health, safety or morals of children".<sup>11</sup> This is not an exhaustive definition, and the phenomenon of worst form of child labour continues to be a contested one particularly in developing countries. Before taking up this definitional problem concerning the WFCL, the legal regime provided for by the WFCL Convention can be analysed.

The Convention No. 182 provides both for the prohibition and effective elimination of the WFCL, requiring immediate and comprehensive actions by member states to that effect.<sup>12</sup> Defining the 'child' as a person under the age of 18,<sup>13</sup> the Convention adopts the policy that, while taking actions to eliminate the WFCL each member state will take into account free basic education of the children and removal of the children concerned from all such work followed by their rehabilitation and social integration.<sup>14</sup> Member states are also to address the needs of families of the concerned children. The specific obligation clause of the Convention, i.e., Article 7, provides that each member is obliged to take necessary measures effectively to enforce domestic legal provisions giving effect to the Convention. Each member-state is also mandated (i) to take effective and time-bound measures to prevent the engagement of children in the worst form of child labour, (ii) to provide direct and appropriate incentives for the removal of children from WFCL as well as for their

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genre see Banu, Nasim, Shahjahan Bhuiyan, and Smita Sabhlok. 1998. "Child Labour in Bangladesh", *International Journal of Technical Cooperation*, vol. 4(1): 83-95.

<sup>10</sup> Formally the Convention's broad objective has been to provide for the prohibition and immediate action for the elimination of the worst forms of child labour. It entered into force on 19 November 2000.

<sup>11</sup> *Ibid.*, Art. 3; the quoted phrases are in Art. 3 (d).

<sup>12</sup> *Ibid.*, Art. 1.

<sup>13</sup> *Ibid.*, Art. 2.

<sup>14</sup> *Ibid.*, Art. 2.

rehabilitation and social integration, and (iii) to provide for appropriate education and training for children so removed.<sup>15</sup>

Bangladesh ratified the Worst Form Convention on 12 March 2001, and its obligations under the Convention came into effect on 12 March 2002. Like any other ratifying state, Bangladesh's obligation under this Convention is to eliminate WFCL by taking appropriate participative actions, and to effectively implement domestic legal and policy provisions giving effect to this Convention, which will, among others, prevent the engagement of children in the WFCL.<sup>16</sup>

### 2.2 *The Minimum Age Convention*

The Minimum Age Convention 1973 (No. 138) of the ILO, which till date remains another fundamental instrument on child labour, prescribes the minimum age of 15 for admission to employment,<sup>17</sup> with exceptions for the least developing countries, and for 'light work'. Under this Convention, which Bangladesh has yet to ratify,<sup>18</sup> a member state whose economy and educational facilities are "insufficiently developed" may provide for a minimum age of 14 years for work.<sup>19</sup> It further provides that minimum age for certain types of work that by their 'nature' and 'circumstances' under which they are carried out are likely to jeopardise the health, safety and morals of young persons (i.e., the worst forms of child work) must not be less than 18 years.<sup>20</sup> The government of a ratifying state is obliged to publish a list of these types of employment or work. By virtue of this provision, the Minimum Age Convention has virtually prohibited the engagement of children in 'hazardous' work or worst forms of labour.

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<sup>15</sup> *Ibid.*, Art 7.2.

<sup>16</sup> See *ibid.*, Articles 5-8, for other obligations concerning the WFCL.

<sup>17</sup> See Art. 2, paragraph 3. This minimum age is equal to the age of compulsory schooling, if it is not less than the threshold of 15 years.

<sup>18</sup> Bangladesh has ratified or acceded to some important minimum age Conventions such as the Convention fixing the Minimum Age for Admission to Industrial Employment (No. 59) 1937.

<sup>19</sup> *Ibid.*, Art. 2, paragraph 4.

<sup>20</sup> *Ibid.*, Art. 3, paragraph 1. However, Art. 3, para. 3, makes an exception that this age may be fixed at 16 when it is guaranteed that health and safety of the workers are adequately protected and they are trained of the techniques of use and consequences of faults.

### 2.3 *The Child Rights Convention*

The next important international instrument prohibiting hazardous child labour is the UN Convention on the Rights of the Child 1989 (hereafter 'CRC'). The CRC, which has achieved a nearly universal ratification, obliges States Parties including Bangladesh, which ratified the CRC in 1991, to take legislative, administrative, social and educational measures so as to implement the child's right 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.<sup>21</sup> Thus, without using the nomenclature 'WFCL', the CRC has unequivocally established the child's right against worst form of child labour through this broad-based legal prescription.

### 2.4 *Bangladesh's Obligation to Eliminate Child Labour under Other Human Rights Instruments*

In addition to obligations under the above specific Conventions,<sup>22</sup> Bangladesh has certain other obligations concerning the elevation and protection of child rights under major international human rights instruments and declarations such as the Universal Declaration of Human Rights 1948,<sup>23</sup> the International Covenant on Civil and Political Rights 1966 (ICCPR), the International Covenant on Social, Economic, and Cultural Rights 1966 (ICESCR), and so on. Particularly, a number of obligations under the binding treaties ICCPR and ICESCR, to which Bangladesh has acceded,<sup>24</sup> pertain to the protection of child rights, which can be interpreted as having restricted the WFCL. For example, the ICESCR's Article 10 generally provides for the right to education, with a specific mandate for "[s]pecial measures of protection on behalf of all children and young persons without any discrimination for reasons of parentage and other conditions".

<sup>21</sup> The United Nations Convention on the Rights of the Child 1989, Article 32. The CRC also specifically provides for the child's rights to primary education (Art. 28), to rest and leisure (Art. 31), and to protection from sexual exploitation (Art. 34) and trafficking (Art. 35).

<sup>22</sup> While Bangladesh has ratified some other instruments in this field such as the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, it has yet to ratify the United Nations Convention against Transnational Organized Crime (CTOC) and related protocols.

<sup>23</sup> Amongst others, it provides for the protection against slavery and servitude.

<sup>24</sup> Bangladesh acceded to the ICCPR on 6 September 2000, and to the ICESCR on 5 October 1998.

It is of particular concern that although Bangladesh has ratified a number of international treaties concerning child labour and/or the protection of child rights, there is virtually no domestic statute incorporating its international obligations and commitments. This is, however, not to deny that some domestic legal provisions are largely in accord with international labour rules and standards with regard to child labour or WFCL. That, in itself, is not surely enough. It is argued that in order for Bangladesh to optimally discharge international obligations vis-à-vis child labour, there is the need for specifically incorporating them into domestic law.<sup>25</sup>

### 3. Legal Prohibition or Regulation of the WFCL in Bangladesh

In Bangladesh, there is no general statutory or constitutional prohibition of work/labour likely to harm the health, safety or morals of children less than 18 years old. The Bangladeshi Constitution and other laws, however, seek significantly to regulate the exploitative child labour or the worst forms of child labour. Below, I discuss the legal prohibition or regulation of the WFCL.

The most important document concerning the issue of child labour or the WFCL is the Constitution of the People's Republic of Bangladesh (hereafter 'the Constitution'). Although the Constitution has not directly outlawed the WFCL, it remains the edifice of state responsibility vis-à-vis the WFCL as well as of public duties concerning the general welfare of children. This is reflected in the formulation of National Children Policy 1994,<sup>26</sup> which is based on the recognition of the child's rights to survive, to education and physical safety, and to other social and legal rights and

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<sup>25</sup> It is relevant to note that against the argument that state-obligations under international human rights treaties are not enforceable without their domestic legislative incorporation, there is also an increasingly strong argument that irrespective of such local incorporation a state ratifying an international human rights treaty has a continuing duty to honour obligations there-under, specially when the obligations pertain to universally accepted human rights values. See further, Hoque, Ridwanul and Mostafa M. Naser. 2006. "The Judicial Invocation of International Human Rights Law in Bangladesh: Questing a Better Approach", *Indian Journal of International Law*, vol. 46 (2): 151-84.

<sup>26</sup> See The Government of Bangladesh. 1994. *The National Children Policy*. Dhaka: Ministry of Women and Children Affairs. The Policy proposed that there would be formed a National Children Council to monitor the implementation of children's rights and to "ensure" the implantation of the CRC. The Council has not yet been brought into being.

essential privileges. The Children Policy also categorically pledges to eradicate child labour gradually.

As per Article 14 of the Constitution of Bangladesh, a fundamental state responsibility is to protect citizens from exploitation, while Article 15 burdens the State with another fundamental responsibility to ensure basic necessities for all. Article 17 imposes a duty on the State to adopt effective measures to ensure free and compulsory primary education for children,<sup>27</sup> while Article 18 mandates the maintenance of public health and morality. At a more positivist level, every one including the child has the right to be protected against discrimination by the State in particular as per Article 28 of the Constitution, and by other actors generally as per the constitutional equality and legal protection clauses.

Importantly, Article 28 (4) of the Constitution, making leverage for state actions in favour of backward or underprivileged sections of society, empowers the state to employ positive discrimination through affirmative actions in order to uplift the fate and living standards of children.<sup>28</sup> There are other foundational constitutional values such as the prominence of the rule of law, democracy and justice in state governance and the respect for human dignity and human rights,<sup>29</sup> which are decisively relevant in addressing the problem of WFCL.

It is clear that the Constitution speaks for a general state duty against WFCL. But this conclusion should be balanced with possible severe social consequences likely to arise from constitutional banning of the WFCL without eradicating the root causes of children's engagement in child labour and improving the government's social service capacity. This perplexing legal conundrum becomes more evident when one comes to the question of the value or implication of one's fundamental constitutional 'right to life'.<sup>30</sup> The perplexity lies in the fact that while allowing children in WFCL is incompatible with human dignity, pushing

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<sup>27</sup> Governmental action in view of this mandate first came in 1990 through the enactment of the Compulsory Primary Education Act 1990. See below note 31.

<sup>28</sup> Article 28 of the Constitution guarantees a general protection from discrimination by the State. Article 28(4) provides an exception to this rule. It reads: "Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens".

<sup>29</sup> The Constitution of Bangladesh, Preamble and Article 11.

<sup>30</sup> For the right to life see Article 32 of the Constitution. See also Article 31.

some of them to the brink of non-survival by disallowing them to take up such works of 'worst forms' might be seen as equally undignified and even violative of 'the right to life' of those children.

Apart from the Constitution's generalised provisions vis-à-vis child labour or WFCL, the Bangladesh Labour Act 2006, the major relevant statute, prohibits the employment of children below 12 years of age in any work other than light work. Section 44 of the 2006 Act provides that a child at the age of 12 can take light work not detrimental to his health and development, and not at the cost of his education. Taking the prevailing social context of child employment into account, the law also provides that when such a child worker is a school-going child, his or her work hours should be so arranged as not to interfere with his/her school-attendance.<sup>31</sup>

Moreover, the Labour Act 2006 inadequately prohibits the employment of any child below the age of 14,<sup>32</sup> distinguishing this category from the children aged between 14 and 17 years of age, called 'adolescents' in section 2(8) of the Act. According to this Act of 2006, the adolescent is allowed to work subject to compliance with certain prescribed conditions,<sup>33</sup> even though the work may involve 'dangerous machines'. For example, section 40 of the Act provides that no adolescent shall be engaged at a machine without having been instructed as to the dangers arising from the operation of the machine or without being properly trained in handling the machine. In a similar vein, while allowing an adolescent to work in any 'factory or mine', the Act seeks to protect the child worker in such establishments by regulating the working hour for him/her.<sup>34</sup>

Appreciably however, the Labour Act 2006 has to some extent incorporated the hazardous work phenomenon by prohibiting the employment of the adolescent (a child of 14 to 17 years age) in works

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<sup>31</sup> The Compulsory Primary Education Act 1990 makes education compulsory for children aged 6-10, which conceivably has a positive contribution towards eliminating the child labour or the WFCL.

<sup>32</sup> The Labour Act 2006, s. 34(1) and s. 2(63) respectively.

<sup>33</sup> See *ibid.*, ss. 40-43.

<sup>34</sup> *Ibid.*, s. 41. The maximum working hour for an adolescent in a factory/mine is 5 hours a day and 30 hours a week, while in case of any other establishment this is 7 hours a day and 42 hours a week. See *ibid.*, s. 41, subsections (1) and (2) respectively.



involving operating machines,<sup>35</sup> and in underground or underwater works.<sup>36</sup> Moreover, the government is empowered to prescribe a list of 'dangerous works' and to prohibit the engagement of adolescents in them.<sup>37</sup> Another important provision of the Labour Act 2006 is its section 112 that has prohibited the employment of any person below the age of 21 as a driver and any person below the age of 18 in a capacity other than that of a driver in the road transport sector. Undeniably, in Bangladesh, work in the transport sector entails a considerable amount of high risk to one's life and health, and hence employment of children in the transport sector would form a WFCL. From this perspective, section 112 of the Labour Act is a welcome step towards controlling the WFCL.

Importantly, the Children Act 1974 which, along with the Children Rules 1976, form the national charter for children,<sup>38</sup> prescribes the age of 16 as the age of childhood, and criminalises in section 44 the exploitation of children by the employer and other illegal and immoral activities involving children. The Act thus implicitly prohibits children under the age of 16 to take up work that may be injurious to their overall development.<sup>39</sup>

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<sup>35</sup> *Ibid.*, s. 39. Section 39 provides that no adolescent shall be allowed in any establishment to clean, lubricate, or adjust any part of machinery while that part is in motion, or to work between moving parts of any machine or between a fixed and a moving part of an operating machine.

<sup>36</sup> Section 42 of the Labour Act 2006 also prohibits work under the surface or beneath the waters by children aged 14 to 17 years. Similarly, the Mines Act 1923 (Act No. 4 of 1923) prohibits work in mines by children below the age of 18 [s. 26 (A)], a bar that can, however, be overcome if a doctor certifies a child to be able to work.

<sup>37</sup> *Ibid.*, section 40(3).

<sup>38</sup> See also the Bangladesh Shishu Academy Ordinance 1976. For a critique of the Act of 1976 see Malik, Shahdeen. *The Children Act, 1974: A Critical Commentary*. Dhaka: Save the Children UK, 2004.

<sup>39</sup> Haider, Mostafa. 2008. "Recognising Complexity, Embracing Diversity: Working Children in Bangladesh", *South Asia Research*, vol. 28(1): 49–72, at p. 56. The Children Act 1974, sections 34–43, prohibits several versions of child-exploitation through engaging them in begging, or exposing them to drugs, brothels, sodomy, and seduction. See further sections 35, 41, and 42 of the Labour Act 2006, which criminalise the engagement of children in begging or prostitution.

Despite the existence of a plethora of laws<sup>40</sup> and international instruments creating obligations vis-à-vis child labour for Bangladesh, child labour continues to exist here for several cross-cutting factors such as economic, cultural, and political. It is obvious that 'the law' in Bangladesh has been tolerating child labour and probably some worst forms of child labour, which according to one researcher is arguably not a 'breach' of international law as is traditionally understood, but rather reflection of social and local construct of global standards.<sup>41</sup> For example, the law of prohibited labour for children below 12 is often violated in order to meet, among others things, the survival need of the child. The observation as to legal tolerance is also true of the fact that domestic child labour is not legally regulated in Bangladesh. Once this problem of legal tolerance or non-regulation is acknowledged,<sup>42</sup> the next area of focus should be the gradual elimination of the WFCL and the protection of fundamental rights of working children, especially of those who are in WFCL, including the so-called 'hard-to-reach' children.<sup>43</sup>

#### **4. WFCL in Bangladesh: Doubting the Uniformising effort in Understanding the WFCL**

There is doubtless a sizable number of children engaged in WFCL in Bangladesh, working both in formal economy (such as in industries) and informal economy (e.g., domestic workers).<sup>44</sup> Why are children found in work or WFCL? Many would suggest that poverty is the premier factor

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<sup>40</sup> In addition to statutes discussed above, a number of other laws sporadically and indirectly address the issue of worst forms of child labour. Amongst these laws are: The Suppression of Violence against Women and Children Act 2000; The Narcotics Control Act 1990; and The Suppression of Immoral Traffic Act 1933. The Act of 2000, for example, criminalises abduction of and trafficking in children, while the Act of 1933 provides for punishments for the offence of exposing children to prostitution. These laws thus supplement the objective of outlawing WFCL.

<sup>41</sup> See Haider (2008), above note 39.

<sup>42</sup> A particular limitation of local official laws in Bangladesh is that they address industrial employments only, leaving an array of informal-sector works out of the protection net. Another creeping problem affecting the child's rights is that, whatever laws are in place, they suffer from a chronic problem of non-implementation or mal-administration.

<sup>43</sup> See the Labour Act 2006, and the Factories Rules 1979 for some protective measures.

<sup>44</sup> About 71.55% of working children aged 5-14 are employed as unpaid family workers (62.4% in the case of boys and 80.7% in the case of girls).

behind child labour in Bangladesh, and that it is for the poverty-child labour link that child labour/hazardous labour may not be eliminated altogether from Bangladesh.<sup>45</sup> Recent empirical research, however, claims that the relationship between poverty and child labour is weaker than is often believed.<sup>46</sup> As Khair tells us, other social and cultural factors such as immediate monetary gains accruing from work rather than from attending schools, or migration and surging of population may also account for this scenario.<sup>47</sup> Betcherman *et al* report that apart from the poverty factor, children may prefer work because of a combination of the following factors: (i) *incentives* favouring work, (ii) *constraints* compelling children to work, and/or (iii) the fact that decisions are not made in the child's best interest (*agency problem*).<sup>48</sup> In their words:

It is true that the incidence of child labor is associated with poverty, [...]. Other forces clearly come into play. For example, children may work because the economic returns to working may be greater than returns they would be able to accrue in low-quality, inaccessible schools. Or families in vulnerable situations may put children to work because they need the immediate benefits of their labor due to lack of access to credit instruments or social safety nets. These situations require multi-sectoral approaches that can involve, at a minimum, education, social protection, and health interventions, as well as enforcing compulsory education and child labor regulations.<sup>49</sup>

Whatever the reasons behind children's engagement in labour, the reality remains that Bangladeshi children are undertaking multifaceted worst forms of child labour, which are damaging for their development as these works often produce injurious physical and mental health consequences,<sup>50</sup>

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<sup>45</sup> See World Bank. 2000. *Breaking the Cycle: Working Children in Bangladesh*. Dhaka: The World Bank, at p. 10. See further Banu *et al* (1998), above note 9.

<sup>46</sup> See further Betcherman, Gordon, Jean Fares, Amy Luinstra, and Robert Prouty. 2004. *Child Labor, Education, and Children's Rights*. Washington, D.C.: World Bank, Social Protection Unit.

<sup>47</sup> Khair, Sumaiya. 2005. *Child Labour in Bangladesh: A Forward Looking Policy Study*. Geneva: International Programme on the Elimination of Child Labour, ILO.

<sup>48</sup> It may be noted that while participation by working children in family decision-making may help reduce child labour, this may also rationalise the toleration of the practice.

<sup>49</sup> As in note 46 above, at pp. 3-4.

<sup>50</sup> Alam, Md. Zahangir, Saulat H. Zaman and Mohammed M. Mulla. 2006. "Work and life of children engaged in the worst forms of labour" (in Bangla), *Dhaka Bishwabidyalyo Patrika*, vol. 83-84: 129-56.

as well as economic consequences. But it is hard to sort out works which are to be treated as constituting WFCL according to national and international legal standards. One study by ILO-IPEC, UNICEF, and BSAF<sup>51</sup> identified 27 forms of works as hazardous or WFCL, which include work in transport industries and automobile workshops, and working as 'helpers' of buses, trucks or other modes of transports.<sup>52</sup> The list is by no means exhaustive, and it may be the case that even a form of apparently harmless work may indeed be the 'worst form' of labour for a particular category of children in a given scenario.

Although the ILO Convention No. 182 broadly allows individual states to legislate on kinds of WFCL, there is a need for a wider margin of appreciation to be kept for developing nations in outlawing WFCL. Also, the dominant literature and global prescriptions by international organisations tend to define 'labour' or 'work' with reference to economic activity, thereby precluding a number of other forms of work from the protection scenario. These may be voluntary work or self-employment needed for sheer survival of the 'self' minus the intent for profit. In a tradition-bound society like Bangladesh, children sometimes work to contribute to their familial survival or to contribute to their parents' household works out of a sense of 'duty'. When seen legalistically, works of this sort may, too, be called hazardous or WFCL. They, however, are tolerated in society and have become a long standing reality.

It seems, therefore, that the existing global legal regime and policy suggestions concerning the WFCL are biased towards developed countries, as they often tend not to be society-specific but rather to be generally prescriptive, which may be deficient in performance in a culturally different society. This is evident in, for example, the treatment of 'education' as a highly potent preventive instrument against WFCL without focusing enough on other strategies that may create an internal environment denouncing child labour. The limitation of generalised global legal strategies may be further illustrated by a reference to the fact that the widely-employed anti-child labour strategy of education has not actually worked in Bangladesh, as the existing girl child labour in

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<sup>51</sup> IPEC and BSAF respectively stand for International Labour Office's International Programme on the Elimination of Child Labour, and Bangladesh Shishu Adhikar Forum.

<sup>52</sup> See Bangladesh Bureau of Statistics 2006. *Baseline Survey For Determining Hazardous Child Labour Sectors in Bangladesh 2005*. Dhaka: BBS.

Bangladesh's ready-made garment industries shows.<sup>53</sup> On this, the following comment made in a World Bank study is self-explanatory:

Child labor, particularly as it relates to education, received attention in Bangladesh following the introduction of the Harkin Bill in the U.S. Senate in 1993. The Harkin Bill put an immediate ban on imported goods fabricated or manufactured by children. In Bangladesh the Harkin Bill had an immediate and visible impact on the ready-made garment sector, which accounted for less than 1 percent of child labor. All garment factories laid off their child workers. The bill assumed that the children would now attend school; instead, almost all children sought alternative employment as vendors, beggars, or child prostitutes. In fact, not a single child entered school voluntarily.<sup>54</sup>

It is however encouraging that, in recent times the international community is increasingly listening to the call for diverse but sustainable actions. The international community and civil society have perceptively shifted from concentrating on 'hazardous' to concentrating on 'the worst forms' of labour, which is perhaps a recognition (although it is never appreciated) of the fact that the idea of 'childhood' and outlawing-efforts concerning child labour are bound to be diverse and society-specific, rather than uniform. This 'shift' is evident in the division between child work and child labour, by which needs-based 'child work' is being tolerated now-a-days.

##### **5. The Role of the Government and Civil Society in Eliminating the WFCL**

This section focuses on the role of national actors in fighting WFCL, but recognises the exceedingly important role of international actors as a source of inspiration and pressure for the national-level actors. The key global actors are: the ILO; UNICEF, UNESCO, World Health Organization, World Bank, donor countries, international NGOs, consumer movements, human rights movements, the media, the research community, working children and youth movements. The actors at the national level are the government and its various departments, NGOs

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<sup>53</sup> One may recall here the U.S. Harkin Bill's ambitious goal of eradicating child labour from the Bangladeshi garments industry through introducing the education incentive. On the situation of working girl children in the garment industry see, Khair, Sumaiya. 1995. *Changing Responses to Child Labour: The Case of Female Children in the Bangladesh Garments Industry*. London: University of East London (unpublished PhD thesis).

<sup>54</sup> World Bank (2000), above note 45, at p. 14. This is not to claim that 'education' as a tool for fighting child labour is without any success. See above note 31.

and INGOs working in Bangladesh, civil society actors including researchers, academicians, employers, and parents and children concerned. These stakeholders are all indeed duty-bearers, each of them having to bear responsibility under the law and the Constitution towards children in WFCL.<sup>55</sup> As seen, the government in Bangladesh has further obligations in the concerned area under international laws and commitments,<sup>56</sup> arising particularly from the Constitution of the ILO and its several 'Conventions' and 'Policies/Recommendations'.<sup>57</sup>

It follows that the Bangladeshi State has some national and international obligations towards minimising and eliminating the WFCL, in the discharge of which the civil society can play a participatory role. The role of the civil society, of which NGOs are a strong component, in catalyzing or producing social changes is well known.<sup>58</sup> The goal of NGOs working on child rights and/or labour is, in effect, to increase public participation and protect the public interest. As a result, state responsibility and the strength of civil society are positively co-related, one influencing the other. However, as societies and their needs are diverse, the roles of government and civil society actors in a given society are bound to be different. However, since there may be a role for the international civil society to engage in some common and global issues such as the elimination of the worst forms of child labour, there is the need for an effective collaboration between local civil society and international civic actors.<sup>59</sup>

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<sup>55</sup> See Art. 21 of the Constitution which imposes a duty upon public officials as well as ordinary citizens to abide by the law and Constitution. It is to be noted that the term 'Constitution' includes the foundational values of a particular nation.

<sup>56</sup> For example, under *Rawalpindi Resolution* (October 1996), Bangladesh pledged to eliminate hazardous child-labour by 2000, and all forms of child labour by the year 2010.

<sup>57</sup> Bangladesh attained ILO membership on 22 June 1972.

<sup>58</sup> On the concept and the role of civil society see generally Siddiqui, Zillur R. 2001. *Quest for a Civil Society*. Dhaka: Suheepatra; Shahabuddin, Mohammad. 2002. "Revisiting the Concept of Civil Society: A Theoretical Approach", *Bangladesh Journal of Law*, vol. 6 (1 & 2): 109-26.

<sup>59</sup> On this notion see further Samad, Muhammad. 2007. "Child Workers in Hazardous Occupations in Bangladesh: GO-NGO Interventions", *Social Science Review (The Dhaka University Studies, Part D)*, vol. 24(2): 133-42. This work merely gives an account of initiatives towards eliminating hazardous child labour undertaken by the government agencies and NGOs, but does not analyse their impacts.

It can be mentioned here that child labour is commonly understood from four perspectives, legal, social, economic and human rights perspectives, which in turn are key to the understanding of the role of the government and civil society actors. The governments often tend to treat the issue of WFCL mostly from purely legal perspective, but sometimes in combination with 'human rights' and 'economic' perspectives. The social perspective, advocated mainly by NGOs, constructs child labour from the point of view that child labour and the resultant exploitation is a consequence of social exclusion of the child. In this approach economic perspective is often under-focused, and this may conveniently ignore the child as a social actor,<sup>60</sup> thereby sidetracking the agency of the child and its right to participate. It can be thus argued that, in order to attain the goal of eradicating the WFCL, the concerned actors need to combine all the relevant perspectives from which child labour can be viewed and tackled.

## 6. Conclusions

It appears from the above that the elimination of the WFCL has turned out to be an overly complex task particularly in Bangladesh, calling for no single strategy. There indeed is no right answer to the problem of worst form of child labour. A proven reality, however, is that law has propelled limitations in adequately handling the problem. The present international regime is inadequately society-specific, while the Bangladeshi laws dealing with child labour or WFCL are fraught with lack of enforcement, incoherence, and legal uncertainty as evident, for example, in different legal ages of childhood. Even when it comes to the question of 'law', there is no systematic mechanism for the enforcement of existing legal provisions meant for the 'eradication' of child labour or for the welfare of child workers.

The renewed global vision to eliminate the child labour by 2016, premised on the old goal of 'immediate' elimination of the WFCL, seems ambitious. However, we must not stop our endeavours, legal, social, and developmental, towards reducing the WFCL. For example, despite the limits of law, 'law' can be utilised as a site of contestation to improve the situation through means like public interest litigation. It seems that the zeal and vigour of the world movement against child labour has somewhat dwindled, which is also a case in Bangladesh. While global actors must continue to work in a holistic manner and in recognition of cultural and socio-economic diversities amongst nations, local actors and stakeholders must unite and reenergize themselves.

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<sup>60</sup> See Haider, above note 39, at p. 54

The complexity of the subject disallows any single or right recommendation. One must not, however, overlook the oft-made recommendations for more research work, a vigorous system of registration of birth and of child work, escalating education facilities, strengthening poverty-alleviation programmes, the removal of existing inconsistencies in laws, and the setting up of a central coordinating body for the effective monitoring of all actions in the area of WFCL. Given the extra-complexity of the issue of elimination of WFCL in the Bangladeshi context, the best recommendation would be to ask all concerned, the government and non-government actors, researchers, parents, employers, and the victims (children), to work with a spirit of togetherness and honesty in order to create an environment that will gradually eliminate the WFCL. This approach should essentially be predicated upon social justice, and on social responsibility of everyone with powers and duties. Attention should thus be paid to the wellbeing and development of the children in the worst forms of labour and of their families, pending the natural elimination of the WFCL.