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Child Rights in Bangladesh: A Comparative Analysis on National and International Legal Framework

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ABSTRACT

Child rights are always ignored through the ages irrespective of the national or international arena. Children are most susceptible to all types of vices and victimizations, and so intensive care is required for their protection. Although there are many national and international laws for the protection of children's rights but these are not above criticism. Child abuse is a common and frequent thing in Bangladesh. The United Nations set forth some rules for protection of children's rights. Being a member state, United Nations Convention on the Rights of the Child (UNCRC)-1989, is trying to protect children from abuse but it cannot be suppressed in any way. This paper is an attempt to show the actual socio-economic scenario of the children in Bangladesh and show a roadmap regarding how to protect the child rights. Additionally, this paper examines the National and International Legal Framework where children's rights are protected and traces various causes for violation of these rights.

Keywords: Children, Child rights, Abuse, Legal framework, Bangladesh, Violation, and Protection.

INTRODUCTION:

Children are considered the most valuable asset of any nation because today's children are tomorrow's future of any nation, government or state. It is said that where the children's rights are not protected, the future of the concerned state is not protected. A famous person said that "Giving children a healthy start in life, no matter where they are born or the circumstances of their birth, is the moral obligation of every one of us"¹. So if we want to make a country based on sustainable development, at first we have to give priority regarding our children rights. Bangladesh is a South Asian Country where children are abusing in various ways such as, physical abuse, psychological abuse, sexual abuse, child labor, child trafficking and it cannot be control-

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led in any way. Besides, online harassment incidents are also alarming for Bangladesh. A survey performed by Ain o Salish Kendra (ASK), revealed that many children have been subjected to various sorts of online harassment during the Covid-19. ASK reported that 88% of the online harassment incidents occurred by strangers but only 6% of the victims had filed lawsuits was the most concerning finding. The complicated legal system and parents' and kids' ignorance may have contributed to this kind of legal assistance seeking². We know that child abuse is a common issue in Bangladesh and the government is unable to pinpoint the critical problems or priorities that need to be addressed in order to the implement the Convention concerning Rights of the Child or the advance and

safeguard human rights more broadly. Although there are so many National and International laws and legal documents, where the children rights are preserved but still now these rights are unprotected Human Rights. The United Nations Convention on Rights of the Child (UNCRC) sets forth the civil, political, health, social and cultural rights of children. It outlines children's rights and how the government should cooperate to ensure that they are available to all children. Being a member state of UNCRC, Bangladesh is bound to comply with these rights. In Bangladesh, The Children Act-2013 is passed with the intention of putting the terms of the aforementioned treaty into practice but the reality is different. The main objective of this study is to find out the gaps between law and reality by the analyzing National and International Legal Framework regarding child rights in Bangladesh.

Objectives of the Study

The UNCRC sets forth the civil, political, health, social and cultural rights of children. On the other hand, The Children Act-2013 is enacted for the purpose of the implementing the provisions of the said convention. But the matter of sorrow is that these rights are still now unprotected due to some invisible causes. The study's primary objectives are;

- 1) To determine the discrepancies between law and reality with regard to the children's rights in Bangladesh.
- 2) To identify the gaps in the current legislative framework that makes it more difficult to protect children's rights in Bangladesh.
- 3) To find out some key factors which are the main causes of the child abuse and show a roadmap applying this society will be free from the child abuse.

Review of Literature

There are many Books, Journal, Articles and Editorial Writing where the writers have discussed about child rights in Bangladesh. Some of the relevant articles have been reviewed below;

Child Rights in Bangladesh by Haradhan Kumar Mohajan³

The child rights of Bangladesh have been examined in this study, which depicts the current situation. The authors of this paper have attempted to define children, UniversePG | www.universepg.com

outline their rights, discuss strategies for the reducing child abuse, and discuss the advantages for the nation should child rights be adequately upheld. The author also focused on child crimes, child trafficking and underlined the need to eradicate these two abhorrent and illegal practices from society. This study demonstrates the actions made by the GoB and UNICEF to ensure that all children receive an education and to reduce child labor forms of child maltreatment.

Child Rights by Gobinda Mandal⁴

This study's objective is to provide sufficient knowledge about the rights of the children in national and international perspectives. This will aid in understanding the current situation of children in Bangladesh, their rights under various national legal instruments, abuses and exploitation of children, national policies and international documents protecting their rights.

Children's Rights & the Imagination of Community in Bangladesh by SC White⁵

This paper argues that widely disparate representations of children in Bangladesh are a reflection of many local and global "imagined communities" of society and politics. A local culture of "guardianship" as the main social institution governing children's life contrasts sharply with universal notions of "the rights of the child". How may combining them alter both the analysis and action? Engaging with both development agency politics and Bangladeshi anthropology, the study examines if the borders of community may be 're-imagined' to mobilize more positive cultural and material resources for children on the edges.

Child Abuse and NGO's Initiatives in Bangladesh: A Critical Review⁶

This paper focuses on the steps that non-governmental organizations (NGOs) are taking to try to change the "abusive" environment and provide a better future for the children who are either directly or the indirectly impacted by these abusive conditions. The review sheds light on the factors that contribute to child maltreatment & offers recommendations for improving the situation of these children by the raising public awareness.

METHODOLOGY:

Multiple methods have been used in this research. This

research is analytical and at the same time empirical in nature. The present study is based on the findings collected from informal interviews, field survey and review of the relevant literature. Relevant books, laws, cases, opinions, primary and secondary sources of data, law reports and other forms of written materials have been used for legal analysis. The analytical methods have been used to describe the problems found in the study and causes behind those problems. To conduct field survey, the method of opinion survey has been used in this research. Researchers have taken interview of the concerned authorities namely judicial officers, advocates, police officers, victims and common peoples on this matter. For strengthening the quality of the research, the researchers have also taken data from internet, national and international journals, newspapers, informal discussions etc.

Sources of Data

Both primary and secondary data have been used for this research. Primary sources of data of this study are relevant laws, rules, ordinances, case laws etc. Some primary data are collected from the judges of the tribunals, advocates and victims through face to face interview. And the secondary sources of data of this study are books, published and unpublished thesis, articles, legal reports, newspapers, internet sources etc.

Rationales of the Study

This study will analyze the different sectors for un-implementation of the child rights and show the roadmap by which these rights may be established. In this study, we have shown the significance of child rights. Besides these, we have identified some loopholes and recommendations to ensure child rights in the light of present situation of the World. We believe that, this study will help to find out the different weakness of the existing legislation and policy which are the main hindrance to implement these rights. Additionally, we are hopeful that government also will be inspired to make a welfare state by implementing these laws.

Scope and Limitation

Children are entitled to two types of human rights. They initially possess the same basic human rights as adults. Secondly, in order to safeguard them throughout their minority, they have certain human rights. The scope of the research is to ensure the above-mentioned

rights of the children in Bangladesh through case study, interview of the victim, common people, judges, advocates and various concerned authorities. The limitation of the research is that, it is not possible to conduct this study in all over the Bangladesh. This study will be conducted only various places of the Bangladesh where the very recent incident of abuse has been the committed. Another limitation of this research is that there is a big syndicate that regulates child kidnapping, child trafficking, child used for begging and the various concerned authorities who have been appointed to ensure child rights feeling uninterested to give any information.

Definitional Discussion

Child

A child is a young person who has not reached puberty or reached the age of majority. In legal parlance, a minor is defined as an individual who has not reached the age of majority. In wills and deeds, child can refer to persons of any age. Normally child will refer to issue two meanings in law. First is in the law of the domestic relations and as to descent and distribution. It refers to a son or daughter who is strictly considered to be related to the father or mother and is used as the correlative of parent. And the second is in the law as a person under puberty or under competence.⁷

Child Abuse

Child Abuse means maltreatment to the child which causes physical, mental or sexual harm even causes death. There are so many children in Bangladesh who are depriving from their various human rights and this number is increasing day by day. Such as ill health condition, parental discrimination based on sex, child labor etc. If we are not able to check this abuse, the ultimate scenario of society will be deteriorated day by day which will badly affect the healthy living of children.

The Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C.A. § 5106g), as amended by the CAPTA Reauthorization Act of 2010, defines;

"Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or the emotional harm, sexual abuse or exploitation"; or

"An act or the failure to act which presents an imminent risk of serious harm."⁸

Age of Children

According to UNCRC, 1989, a child is any person who is younger than the age of eighteen, unless the age of majority is reached earlier in accordance with national law.⁹ The African Charter on the Rights and Welfare of the Child (ACRWC), 1999 which aim is to promote rights and best interests of children. According to this Convention, a child is any person who is younger than the age of eighteen.¹⁰ The European Convention on the Exercises of Children's Rights (ECECR), 1996 aims to protect rights and ensure best interests of child. The goal is to the advance children's rights, give them procedural rights, and make it easier for them to exercise these rights by making sure that kids are informed about and permitted to participate in legal procedures either directly or through other people or organizations. This Convention also defines a child is any human being who is under the age of eighteen.¹¹ The Hague Convention on the Civil Aspects of the International Child Abduction (1980 Convention) addresses parental abduction & the removal of minors from across international borders. Its stated objectives are to guarantee the prompt return of children who have been abducted or detained without authorization in any contracting state. The child is defined under this convention as any human being under the age of sixteen.¹² The Children Act-2013 describes children at the age of under 18.¹³ The Domestic Violence Act-2010¹⁴, The Human Trafficking Prevention and Suppression Act-2012¹⁵ and The Majority Act-1875 describes child as any human being under the age of 18.¹⁶ Where The Women and Child Repression Act-2000 describes that children are under the age of 16.¹⁷ The Labour Act-2006 describes children under the age of 14 but under 18 is called as adolescent under the Labour Act of Bangladesh.¹⁸ The Guardians and Wards Act-1890 describes children under the age of 21¹⁹ and The Child Marriage Restraint Act-1929 describes male children below the age of 21 and the female children below the age of 18.²⁰ Bangladesh Penal Code-1860 describes children below 9 as provided under section 82. Our personal laws also describe about the age of children. Muslim Law describes children as any human being under 15 years of age²¹ and the Hindu Law describes children as any human being under 18 years of age. Finally, children are basically describes as under 18 years of the age.

Similarly some of the legislation describes children as any human being under the age of 16 or 21 or so on. In general sense, we can say that under 18 is considered as children in most of the cases.

Exploration of International Laws Regarding Child Protection

At first the focus will be given on analyzing the international framework on the child rights from a comparative perspective. We have analyzed some of the international convention on child rights which is applicable only to child and both the children and the adults. Similarly we have analyzed some of the regional convention on child rights which is applicable for child only and both child and the adult. In this regard we have to know about linkage between human rights and child rights.

Ensuring of the Child Rights and the Protection of Human Rights

Human Rights mean those rights which are inherent and inalienable in the nature of human being and live with human dignity. This right is started from the mother womb and it will be continued until the death body is properly buried. That means human rights continue even after death. After born, a child enjoys various rights such as, protection of life, equal medical treatment, freedom of thought, & freedom of association and prohibition of forced labor which are protected by the International Instruments. According to Art.-01 of the Universal Declaration of Human Rights-1948, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." So, where child rights have been ensured there human rights have been protected.

Child Protection from abuse by the scrutinizing International Convention

On 25th May 2000, the United Nations (UN) General Assembly adopted two optional protocols. The first protocol limits the participation of minors in military operations, and the second optional protocol forbids the sale, prostitution, and pornography of minors. The first Optional Protocol on the Involvement of Children in Armed Conflict calls on governments to take all reasonable steps to prevent their armed forces from recruiting minors under the age of 18 into combat and

mandates that parties make sure that minors are not enlisted in combat. In compliance with the second optional Protocol on the Sale of the Children, Child Prostitution and Child Pornography, Parties shall prohibit the sale of the children. Children or their representatives may file individual complaints for violations of children's rights under a third optional protocol to the Convention on the Rights of the Child on a Communications Procedure.²² The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in Respect of Parental Responsibility & Measures for the Protection of Children encompasses a number of civil child protection measures.²³ The preamble states unequivocally that "the child's best interests are to be the primary consideration." Children are covered by the agreement "from the time of their birth until the age of 18 years," as stated in Article 2. In addition to having uniform guidelines for determining which nation's authorities are the qualified to take the necessary precautions, the 1996 Convention offers a framework for resolving disputes over contact and custody issues when parents are living apart and in the different countries. It also contains provisions on collaboration processes in order to better safeguard unaccompanied adolescents who cross borders and find themselves in risky situations. The Hague Convention on Jurisdiction, Applicable Law, and Recognition of Decrees Relating to Adoptions (1965 Convention) is applicable to all international adoptions, including those in which the child's foreign nationality is the only international component. This includes adoptions where the child did not originate from another country.²⁴ It has been said that the convention contains four significant clauses. Adoptions cannot be approved by the authorities unless it is in the best interests of the child. The authorities should thoroughly investigate the adopter, the child, and the child's family before approving an adoption. The investigation ought to be conducted in conjunction with governmental or private entities that possess expertise in international adoptions, and with the assistance of social workers who have received specialized training. The European Convention on the Adoption of Children applies to the legal adoption of children under the age of eighteen, who are not currently or previously married.²⁵ The ECAC ensures that national child protection rules apply to adoptions

of children from other states as well as adoptions from the states Parties. After the adoption the child should generally be able to acquire the adopter's surname and be treated as having rights of succession and similarly children do not have a right to know who their former parents are? The Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors applies when the domicile of the adopter and the habitual residence of the adoptee are in different state which is irrevocable.²⁶ The Convention states that if an adoption is annulled, the minor's interests are to be protected. The Hague Convention on the Civil Aspects of International Child Abduction (1980 Convention) provides issues related to parental kidnapping or the removal of the rapid return of children who have been illegally taken away from or held in any signatory state is one of the goals of the international treaty on the carriage of children under the age of sixteen. In an international setting, the European Convention on the Recognition & Enforcement of Decisions Concerning the Custody of Children aims to safeguard parental rights to custody and visitation.)²⁷ The Convention calls upon the central authorities designated by States Parties to the provide free, prompt, non-bureaucratic assistance of an improperly removed child. The Worst Forms of Child Labour Convention (WFCLC) refers in the preamble to the need to adopt new instruments for the prohibition and elimination of the worst forms of labour.²⁸ The worst forms of child labour comprises all forms of slavery and practices similar to it, such as the sale and trafficking of children and forced labour; the use, procuring or offering of a child for pornography or pornographic performances; illicit activities such as drug trafficking; work that is likely to harm children's health, safety or morals and to take account of the special situation of girls. The most widely regarded human rights document is the United Nations Convention on the Rights of the Child (UNCRC). The Convention unifies children's civil, political, economic, social, and the cultural rights into a single, comprehensive treaty. On November 20, 1989, the UN General Assembly adopted the Convention, which became operative in September 1990. Every child under the age of eighteen has the right to have their human rights respected and protected, as outlined in 41 articles of the Convention. For example, according to (Article-7), a child has the right to a name, to become a

citizen, to know and be cared for by its parents. The kid has the right to nationality and identity (Article-8), the right to remain with its parents unless it is in their best interests and a court order is granted (Article-9), etc.

Regional Instruments on Rights of the Children

International human rights instruments fall into two categories: regional instruments, which are exclusive to countries in a specific region of the world, and global instruments, to which any state in the world may accede. The regional instruments in this section have the approval of the African Union, Organization of American States, Council of Europe, European Union, Organization for Security and Co-operation in Europe, and Organization of the Islamic Conference. We will now talk about a few regional instruments pertaining to children's rights that are intended to safeguard their rights.

The African Charter on the Human Rights and Welfare of the Child (ACRWC)

This is the first regional agreement on the rights of child. The non-discrimination and death principles are outlined by the ACRWC. Children with disabilities must get extra protection from all sorts of torture, abuse, and mistreatment, as well as from detrimental social and cultural norms.²⁹

The European Convention on the Exercise of Children's Rights (ECECR)

This is another regional documentation of children's rights. The preamble emphasizes the goal of advancing children's rights and best interests.³⁰

The European Convention on the Adoption of the Children (Revised)

It is applicable to adoptions of children who are under the age of eighteen (18) at the time the adopter files for the adoption, are not married and have never been married, are not in a registered partnership and have not gained majority. It will only apply to the legal adoption institutions that result in a permanent child-parent relationship. Each State Party is required to take any legislative or other actions that may be required to ensure that the provisions of this Convention are complied with by its legal system, and they must notify the Secretary General of the Council of Europe of these actions.³¹

The European Convention on the recognition and Enforcement of Decisions Concerning the Custody of Children

It acknowledges that among the Council of Europe's member states, the welfare of the child comes first when the making decisions about his custody.³²

African Charter on Human and People's Rights

According to this Charter, each and every person has the right to be treated with regard for the inherent dignity of humanity and to have his or her legal status acknowledged. It is forbidden to use any kind of force or dehumanize people in any way, including slavery, the slave trade, torture, and the harsh, inhuman, or humiliating punishment or treatment.³³

EU Strategy on the Rights of the Child (2007/2093 (INI)

The primary objective of the Commission Communication "Towards an EU Strategy on the Rights of the Child" is to promote the positive affirmation of the children's rights, particularly the rights to their own identity, care and secure conditions during childhood, a family, the right to be loved and to play, and the rights to health, education, social inclusion, equal opportunities, sport, and a clean and safe environment. This will help to create a child-friendly society where children feel safe and involved.³⁴

The Resolution on Forced Marriages and Child Marriages

The Parliamentary Assembly of the Council of Europe released it in 2005. It recognizes that the underage marriage and forced marriage are violations of human rights that cannot be excused by cultural norms or antiquated legal systems. Furthermore, the Assembly suggested "that member states of the Council of Europe take the following legal measures regulating the right to marry."³⁵ These are the Documents which have been approved regionally to the protect the child rights.

Child Rights Protection in Bangladesh Perspective

This segment analyzes the abuse of children and the rights which are available in Bangladesh in relation with different Act, laws and legal provisions dealings with the children.

Protection against Violence and Repression

The Children Act, 2013 is one of the strongest documents in relation to children's rights dealings with elimination of child labour, protection of children and young persons. This Act has the prevalence over any other laws contrary for the time being in force. And most importantly children means any person up to the age of 18 (eighteen) under this Act.³⁶ The new Act abolishes the early Child Act-1974. In order to perform the duties under this Act, the government shall appoint one or more probation officer in the case of each district, upazila, and metropolitan area and if anyone is appointed as a serving officer immediately before the implementation of this Act shall act such as that he has been appointed under this Act until further notice. The Government may delegate the responsibility of any other officer equivalent to social service officer until the appointment of the probation officer in any area.³⁷ If the child involved in the conflict with the law or in connection with law is brought to police station, to know the reason for arrival, meeting the concerned child and assuring him of all types of cooperation, communication and coordination with the police to identify related complaints or cases, assist the police to locate the mother of the child concerned and contact them, verify the probability of the bail of the child with the child's police officer, if it is not possible to release on bail the concerned child should be send at safe place before the first appearance of court are the duties and responsibilities of the visiting officer.³⁸ In each district, there will be a coherent board called 'District Children Welfare Board and the deputy commissioner will be the chairman of this board. In every upazilla there shall be a board called 'upazilla Child Welfare Board' and the upazilla executive officer shall be the chairman of this board. The duration of the nominated officers for district, zilla, upazilla is two years from the date of their nomination. The Ministry of Home Affairs will constitute a children's office in every police station under the supervision of a sub inspector and the women member will be the priority in this case.³⁹ Individuals will be sentenced with maximum 5 year imprisonment or a penalty of 5 lakh or both, if a child is being abused in criminal activities. Media is prohibited to publish articles, photographs & information that go against a child under trial.⁴⁰ Finally if a person employs a child for begging, provide drugs

to any child, abuse any child there are the specific punishment for that person who helps or instigates child to engage above offences. If we discuss about Women and Child Repression Prevention Act, 2000 then we will come to know some other rights against abuse of the Children in Bangladesh. A person who attempts to kill someone or kill a child using a burning, decomposing, or toxic substance will be punished with the death penalty or imprisonment for life and will be liable to a fine not exceeding one lakh tk.⁴¹ If a person kidnaps a child shall be punished with imprisonment for life or a term not exceeding 14 years and kidnaps a child for the purpose of ransom then the person shall be punishable with the death penalty or imprisonment for life.⁴² If a male rape a child he shall be punished with life imprisonment and killed with murder he shall be punishable with death penalty.⁴³ The most remarkable provision of the Women and Child Repression Prevention Act 2000 is regarding the birth of children as a result of rape. If a child is born due to rape, the child shall be kept under the supervision of his maternal relative; the child shall be entitled to be known to his parent or to the identity of both. The state shall bear the cost of maintenance of that child and if the child is male then the duration of expenditure on the maintenance of such male child shall be payable till the completion of the twenty one year of his childhood and for female child the duration continues until marriage of that female child.⁴⁴ That's all about the right given by the Women and Child Repression Prevention Act, 2000 for the child. The Domestic Violence (Prevention and Protection) Act-2010 set forth some rights and the protection for the children against violence. Violence under The Domestic Violence Act-2010 includes physical, mental, sexual and economical torture. Physical torture includes such a behavior by which life, health, safety and any part of the body will be possibly subjected to harm of a person. If a child is compelled by his/her family member to being involved in a criminal activities that also considers as physical torture. Mental torture includes verbal abuse, insult, humiliation, intimidation, harassment and interferes with the interference of individual liberty, natural movement, communication or personal desire or opinion. Sexual assault includes behavior of the sexual nature in which the honor, reputation or the reputation of an aggrieved person is

damaged. Financial loss includes when the aggrieved person is deprived of any financial privilege, property or property which he deserves, not providing daily goods to the aggrieved person, prevent the application of his legal right over the property which he/she received as a gift.⁴⁵ If any matter of family violence is committed the aggrieved child must get some facilities and protection so that he/she can save himself/herself.

There are police officers, appointing officer, implementing officer, service providers who are bound to take action against the family violence in favor of the aggrieved child. Similarly there are some shelter home, medical service providers which are available to take care of that aggrieved child. There is an option of getting protection order, live order, compensation order, safe custody order as if the aggrieved child can lead a life with safety and security. The Bangladesh Labor Code-2006 also provides some protection for child and prohibits the involvement of child in hazardous work and sets forth the maximum working hours for children. According to section-38 of the Bangladesh Labor Code-2006, no adolescent shall be allowed to give employment in any work has been declared by the government as hazardous and no adolescent shall be employed in any facility to clean, lubricate, or adjust machinery while it is in action, or to work between moving parts of machinery that is in motion or between fixed and moving parts. Section 41 determines the working hours for adolescent. No adolescent shall be required or allowed to work in any factory for more than five hours in any day and thirty hours in any week.

National Legislation

Kidnapping, abduction, enslavement, sexual exploitation, buying and selling kids for prostitution, unnatural offenses, and forced labor are all considered forms of child abuse according to the Bangladesh Penal Code of 1860. The Penal Code mentions different dimensions of kidnapping like- Kidnapping from Bangladesh and kidnapping from lawful guardianship. Anyone who kidnaps a person from Bangladesh or from a legal guardianship faces fines and imprisonment for a term that may reach seven years as punishment.⁴⁶ If anyone compels any child to forced labor against the will of that child shall be punished under The Penal Code. The Code of Criminal Procedure-1898 describes juvenile

under the age of fifteen. When the juvenile committing offences which are not punishable by death penalty or life imprisonment are tried by the Chief Judicial Magistrate or by the Metropolitan Magistrate or by the Special Magistrate empowered by the Government.⁴⁷ The Guardians and wards Act-1890 provide some protection for a minor child who needs guardian for property and body. Any relative, family member, husband of a minor girl child can be a guardian under this Act. If no family member or relative is available then the Court determines a collector as a guardian who takes after the property as his own property and he can't take any malafide advantage from that property of minor.⁴⁸ The collector works under the superintendence of Government and bound to show the documents to the Court that how he does his duty and responsibility. The remarkable provision of this Act is if the collector during his duty as a guardian of a minor takes any malafide advantage from the property of the minor, the Court can compel the collector to make compensation from his own property. The Human Trafficking Prevention and Repression Act-2012 protect the implementation of the rights of human trafficking victims and ensuring the safe and secure immigration. Buying or selling, collecting or receiving, exiling or transporting, exporting or detaining or hiding or harbouring from inside or outside of Bangladesh for the purpose of sexual torture or exploitation by deception, displaying threat, fear or coercion is considered to be a human trafficking.⁴⁹ If any person committed this offence shall be punished with imprisonment for life or the rigorous imprisonment not exceeding five years and with fine not exceeding fifty thousand taka. If any person imports a child by force or deceive for the purpose of the prostitution or for appointing in any other sexual torture or exploitation, he shall be considered to be committed offence and punished with rigorous imprisonment for a term not more than seven years and not less than five years and with fine not more than fifty thousand taka for committing such offence as per section-11 of this Act.

Provisions of Personal Laws Relating to the Child Protection

The Muslim Law determines the guardianship of the person of the minor. When the father of a minor child divorces his wife or vice versa the minor child would

be a child of a broken family. What would be the residence or custody of that minor child when his/her parents are separated from each other? The minor child belongs to his/her mother under The Muslim Law, even after divorce. Mother is entitled to custody of a male child till 7 years, a female child till puberty which is either 15 or 18 years (Hanafi Law) and a male child till 2 years and a female child till 7 years (Shia Law). The mother is the best entitled to the custody of her infant child during marriage and after separation from her husband unless she is an apostate or wicked or unworthy to be trusted.⁵⁰ Though there is a vast difference between mother's right of custody and father's right to be the legal guardian of his minor children. It was observed by the Privy Council in *Imam bandi vs Mutsaddi*.⁵¹

“The mother is only entitled to physical custody of her minor child up to a particular age. But the father alone, or if he's deceased, his executor, is the legal guardian; if mother is not the natural guardian”.

So the right of child is protected by the custody of mother or the executor if mother divorced or the father dies. The Hindu Law protects the rights of an adopted child. The result of adoption is that the boy is moved from his biological family to the adoptive family. It grants the adoptive the same benefits and rights inside the adopter's family as the legitimate son. Similarly, it does not sever the tie of blood between him and the members of his natural family. To reiterate, the personal laws also protect the rights of children in family matters. The very recent case in Bangladesh, the Japanese mother Nakano Eriko and Bangladeshi father Imran Sharif got wed locked in Japan in 2008. In sequel to quarrels in their conjugal lives, Nakano filed for divorce with a Japanese court at the beginning of 2020. On January 28, 2021 she also filed a case with a Tokyo family court for custody of their three children. But on February 21, Imran returned to Bangladesh with the first two girls from Japan. Meanwhile a Japanese court passed a verdict putting the children under their mother's custody. Finally after observing the case, The Dhaka District Judge Court upheld the order of the family court that gave the Japanese mother Nakano Eriko the custody of her two daughters.

Comparative Analysis on the International and national Legal Framework in the protecting Child rights

A human rights convention known as the United Nations Convention on the Rights of the Child (UN-CRC) outlines the civil, political, economic, social, cultural, and other rights that apply to children. The African Charter on the Rights and Welfare of the Child (ACRWC) aims to promote the rights and best interests of children. The European Convention on the Exercises of Children's Rights (ECECR) aims to protect rights and ensure the best interests of child. The Hague Convention on the Civil Aspects of International Child Abduction (1980 Convention) provides issues related to parental kidnapping or the removal of children under the age of sixteen across international borders and stated objectives are to secure the prompt return of children wrongfully removed to or retained in any contracting state. The European Convention on the Recognition & Enforcement of Decisions Concerning the Custody of Children seeks to protect the rights of custody and access to children in the international context. The preamble refers the Worst Forms of Child Labor Convention (WFCLC) mentions the requirement for new legislation aimed at outlawing and eradicating the worst kinds of child labor. The Minimum Age Convention established a general instrument on the subject of the minimum age of employment with a view to achieving the total abolition of child labour. The Children Act-2013, The Women and Child Repression Act-2000 and The Domestic Violence Act-2010 provide some of the rights provided by the different international conventions though not able to provide all of them. Though the member states of UNCRC are bound to comply with this convention, a large number of children are being subjected to violence, rape, murder, trafficking, sexual abuse, exploitation, slavery etc. Alan was 11 years old when he was admitted to the Hill End Hospital Adolescent Unit, where he was supposed to get care along with other young children who needed it. He says from his experience that, “We were beaten, we were punched, we were put in headlocks, we had our heads rammed into doors. I was one of the lucky ones because I wasn't raped, but I know of other people who were.”⁵² In Bangladesh, 36 percent of the people earn less than one dollar per day. Poverty, discrimination, and the

effects of natural disasters presence grave challenges to children. According to a statistics of Bangladesh Shishu Adhikar Forum (BSAF), the percentage of children being killed in the country had increased by 61 percent in 2014 than that of the previous year. It's not considering good at all for this year. The BSAF reports at least 191 children were killed till this July 350 in 2014, 218 in 2013 and 209 in 2012. At least 968 children were killed after brutal torture from 2012 to July 2015. The BSAF also observed that there has seen an increase in cases of homicide, kidnapping, human trafficking, rape, sexual harassment, and violence against children, (The Daily Star, 2015). Following the recent shocking murders of three children, NGOs' law

enforces, rights organizations and international organization have expressed the serious concern over child abuse in Bangladesh. On July 8, 13-year-old Samiul Alam Rajon was fatally beaten in Sylhet.⁵³ On August 3, two men in Khulna tortured 12-year-old Rakib to death by forcing a high-pressure air pump nozzle into his rectum.⁵⁴ Ten-year-old Rabiul was beaten to death for stealing fish in Barguna.⁵⁵ The youngster was beaten, according to the sources at the DMC morgue following an autopsy. Additionally, the incident involving Shahadat Hussain, a member of the Bangladesh National Team, and his wife, who are accused of the abusing their 11-year-old domestic worker.⁵⁶

Reports on Child Abuses in Bangladesh

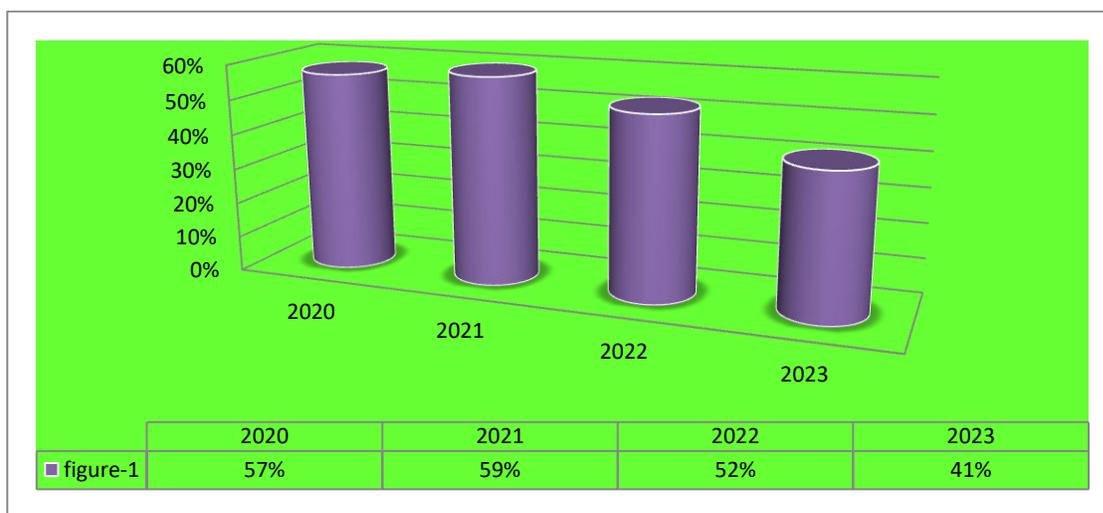


Fig. 1: Incident based case filling Percentage (%) of last 4 years (2020-2023).

N.B. Data for 2023 is up to March.

Source: Reports published in the Daily Star on 27 April, 2023⁵⁷

Table 1: Scenario of last 5 years' Child abuse in Bangladesh (2019-2023).

Years	Total Child Abuse (All categories included)	Reports title	Sources
2019 (Covid '19 pandemic period)	4381	Status Report: Violence against Children in Bangladesh ⁵⁸	Save the Children
2020	1843	The Situation of Children in Bangladesh 2020 Analysis of Newspapers ⁵⁹	Manusher Jonno Foundation (MJF)
2021	1941	Child abuse, deaths, higher in 2021: study ⁶⁰	Md. Muhibuzzaman, Additional Secretary, Ministry of Women and Children Affairs
2022	1088	Bangladesh's persistent child abuse woes ⁶¹	Ain o Salish Kendra (ASK).
2023 (January-September)	786	Quarterly Child Rights Reports January-March 2023 ⁶² , April- Jun 2023 ⁶³ & July- September 2023 ⁶⁴	Ain o Salish Kendra (ASK).

Causes of Child Abuse in Bangladesh

In this segment tries to show some real causes that are liable for child abuse in the world, especially in the Bangladesh, in spite of having so many national and international protection mechanisms through some practical instances on child abuse and some relevant case studies.

Real Causes

It is clear that child victimization is caused by poverty. In poverty, Children are forced to work and earn money, and while they are there, they are abused by their employers and coworkers. Family dynamics have an impact on children's brains that leads to traumatic injury, psychological disorders, and substance addiction that contributes to criminality and delinquency.

The child suffers as a result of the parent's extramarital affair. Mothers have even assisted in the murder of their own children in order to cover up their extramarital affairs. When family members or neighbors are unable to exact revenge on the main target, they will sometimes target the child because they are the weaker member of the family. A child's lifestyle includes their living quarters, their outdoor activities, the school they attend, and the location of their educational institution. For example, a girl child who goes outside or works at night is more likely to be victimized than a girl child who goes outside during the day. Association has the biggest impact on a child's conduct. Juvenile delinquency, drug addiction, & other crimes can be associated with children. A young girl was sexually assaulted earlier that day, on September 21, by the landlord's son at Battery Ghat in the Kamrangirchar neighborhood of Dhaka, when she went to ask the landlord to switch on the water supply to the tenants' apartments. The victim's family accused Mahmud, the landlord's son, of violating the girl. A forth incidence occurred on July 30 at Badda, where a four-year-old child was raped, murdered, and then locked inside a restroom. Abdus Shahid Mahmud, the director of the Bangladesh Shishu Adhikar Forum (BSAF), stated that although there are laws pertaining to child issues, they do not specifically provide for the safety of witnesses and victims. This is due to the fact that most of the cases, witnesses in child abuse cases do not feel comfortable testifying. The protracted judicial process also frequently causes the families of the victims to lose interest in the cases.

Professor of sociology at Dhaka University Dr. Nehal Karim noted that the trend of some persons abusing authority and breaking the law has led to an increase in child abuse and neglect. "As children are physically weak, they do not have the ability to the resist their predators and therefore they easily fall victim to torture. The prevailing culture of impunity is also contributing to the rise in the incidents of child abuse," he said. Executive director of Bangladesh Human Rights Foundation Alina Khan said: "The laws on child issues are not properly implemented. Punitive measures must be ensured in order to cut child abuse incidents." He pointed out that child abuse is caused by people's ignorance of their rights as children and by the prolonged legal system, emphasizing the need of raising awareness in this area.⁶⁵

Practical Instances on Child Abuse in Bangladesh

We have reviewed three cases which are discussed below.

Case Study-01

In 2010 the students of Debnogor Begum Rokeya High School, specially the girl students of class nine had complained to the head teacher that one of the teachers unnecessarily touches their bodies. They felt uneasy and insulted when the teachers did this. The students felt this was wrong and instance of sexual abuse. The school authorities realized that the misbehavior of that teacher was creating a negative impact on the students and hampering their development. They tried to avoid that teacher's class using various causes and tricks. The school authority took the complaint seriously and shared it among the school teachers and the school management committee members. The head teacher warned the teacher (Abuser) and requested to give up these practices. After participating in the training the teacher was sensitized about how to behave well with the students and gave up his former practices. The female students of the school also noticed that the behavior of that teacher had changed and he is now acting well with them and the students no longer experienced physical touching and misbehavior from the teacher. The CSA training arranged by the Breaking the Silence had been brought a positive change in the knowledge, attitude and practice of the teacher.⁶⁶

Case Study-2

Sheikh Md Samiul Alam Rajon was killed on July 8 by a gang of thugs in the Sylhet Sadar neighborhood near Kumargaon Bus Stand, purportedly for attempting to steal a rickshaw vehicle. Tied to a pool, he screamed for help, cried for water and begged for his life. But until the youngster went completely silent, they laughed and jeered at him. One of them even recorded the terrible event and uploaded it to Facebook. The 28 minute video footage went viral and shows Quamrul in a black t-shirt and lungi, hitting the boy with a stick in the feet, joint of legs, shoulders and in the head. This is a shameful event of child torture. Four persons were condemned by a Sylhet Court to death, including the main accused Quamrul Islam, and another person was given a life sentence for beating 13-year-old Rajon to death in July 2015. Metropolitan Sessions Judge Akbar Hossain also pronounced death penalty for Quamrul and 3 others, one gets life imprisonment, jailed five other accused for different terms of imprisonment, 8 fined for taka 10,000 each, 2 fined taka 1000 each and 3 acquitted. Among the convicts, Pavel and Shamim are on the run.⁶⁷ After the judgment, the defense lawyer proceeds to the High Court Division for an appeal against the judgment of the lower court. The perpetrators turned into a group of animal characters devoid of humanity when they tortured Sheikh Md Samiul Alam Rajon to death in Sylhet in 2015, The High Court Division upheld a lower court's verdict sentencing five convicts to different terms on the grounds that they had attempted to hide Rajon's body.⁶⁸ This is a remarkable example for child torture and similarly a remarkable example for enforcing law. Undoubtedly, this could be a precedent for the judicial branch of Bangladesh and similarly a lesson for those who are intended to commit child abuse and torture.

Case Study-3

In Raipur upazila of Lakshmipur, four-year-old Piyash was subjected to severe torture by a young person called Rakib on suspicion of stealing a cell phone. Injured Piyas, is the son of one Sohel, a resident of Buiyan Hat area under Bamni union in the upazila. Sohel said, Rakib a resident in the same area called his son from in front of his house and took him near Kanchi Kancha Niketan on Wednesday evening. "Rakib kept my son in a sack and tortured him

brutally," he alleged. Piyash was brought urgently to Noakhali Sadar Hospital for treatment after suffering severe injuries to his face and eyes.⁶⁹

CONCLUSION AND RECOMMENDATIONS:

In Bangladesh, the majority of kids lack access to basic rights including education, a healthy diet, nutrition, safety, involvement, playtime, clean water, & hygiene. Children's rights are infringed as a result of discrimination, poverty, ignorance, and lack of social awareness. Most of the time, people are ignorant of the rules and view acts of violence as routine affairs. Street children find no treatment when they become sick. If the Government of Bangladesh being willing to take child protection measures into priority and comply with the international convention as well as confirm human rights of the children, Bangladesh will be the role model undoubtedly in the third world countries. Asoke Kumar Saha, a professor of psychology at Jagannath University said, the unfulfilled human aspirations, a decline in morality, and social turmoil is further causes of child repression. The experts emphasized the importance of guaranteeing a swift trial and exemplary punishment, prompt execution of the judgment, and taking steps to secure the safety of the victims and plaintiffs in order to stop child repression. He also advocated for the government to assist victims whose families lack the resources to pursue their cases⁷⁰. So, at the eventually it is presumed that if it is possible to aware the people regarding positive aspects for protection of children's rights then Bangladesh will be known as child abuse free country in the world. In this segment tries to show some recommendations by the applying rights of the children can be protected by eliminating abuse. One of the most alarming problems is that, the law is not enforced practically instead of having so many laws and protection mechanisms for protecting children from abuse. We have suggested some recommendations regarding how the government, the society, the NGOs and finally the individual can protect children as well as how to improve law enforcement mechanisms which are given below.

- 1) Firstly, the Government should take measures to protect the rights of children like through updating the existing the legislation regarding the protection of children's rights.

- 2) Secondly, the NGO, the Human Rights Organizations, the Civil Society, the Donors and all other Forums are required to work in together with the Government.
- 3) Government should introduce strict laws by the amending existing laws regarding children to cope with the present situation.
- 4) The existing Woman and Child Repression Act 2000 should be amended. There should be an individual bare Act in the name “The Child Repression Act” for children only.
- 5) Child welfare board should have the power for adjudicating allegations against children.
- 6) In addition awareness raising campaigns could be arranged to change the mindset of parents and teachers.
- 7) The Government should implement the provisions of the Children Act 2013 specially provision of probation officer, separate court building and proceedings for child trial without any delay.
- 8) Support is needed for the vulnerable families who are unable to send their children to school through livelihood initiatives and linkage social safety.
- 9) The judiciary, law enforcing agents and the parents & guardians of children themselves must be sensitized to the provisions of the convention on the rights of the child and the law protecting children in Bangladesh.
- 10) Separate Child Court must be established for the speedy trial and the ensuring of child rights.

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CONFLICTS OF INTEREST:

This work has been carried out by us only. Not a single person can claim that he has any contribution in this work. It has not been previously submitted to any other person or institution. So, there is no conflict of interest about the authorship and genuineness of this article in present or future.

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