

## **Protection and Promotion of the Rights of the Domestic (Household) Workers of Bangladesh: A Systematic Approach**

A. S. M. Tariq Iqbal<sup>1</sup>

**Abstract :** *Domestic (household) workers in any country form a marginalized and highly vulnerable group, which is predominantly the factual scenario of Bangladesh. These groups are not only disadvantaged, but also disenfranchised. The situation becomes more acute due to the fact that a very high proportion of the domestic workers are children and women. They do not know about their rights and they suffer in silence. In most cases, they work very long hours without any specified working conditions but receive less. In most cases, they do not have ways to ventilate their grievances. They do not have any practical and effective legal process to enforce their rights or to ensure their benefits and privileges. Initiatives to change their plight are not strong enough to get any immediate result. Existing legal authority and other concerns have no particular agenda to protect the rights of these classes. The study mainly aims to identify the existing laws with respect to the domestic workers and to map out the way-forward in developing the conditions of the domestic (household) workers of Bangladesh.*

**Keywords:** *Domestic (Household) Workers, Constitutional Safeguard, Rights, Social Justice.*

### **Introduction**

South Asia is probably home to the largest number of domestic (household) workers in the world who account for a higher share of the labour force than any other region. Domestic (household) worker in this region, particularly in Bangladesh, is a historical phenomenon with strong legal, social, and economic implications. Yet in terms of basic research and analysis, not to speak of policy implications, this phenomenon remains a virgin territory for research in Bangladesh, a country that employs an unusually large number of men and women in the informal sector as domestic (household) workers. Bangladeshi middle class and upwards families are very much familiar with domestic (household) workers, though they do not recognize their right of minimum wages, allowances, working hours, healthy working environment, maternity benefits, leave, etc. Apart from these, some workers are victimized by their employers and many of them are facing sexual harassments by their lords. Although there are no prolific existing laws in Bangladesh relating to the issue

---

<sup>1</sup> Assistant Professor, Department of Law, Bangladesh Islami University (BIU), Email: [tariqiqbal.shakil@gmail.com](mailto:tariqiqbal.shakil@gmail.com)

of domestic (household) workers, harassments on them are acutely observed in the country. Only introducing provision in the constitution may save these marginalized classes from the inhuman victimized conditions as they suffer sternly in their working places.

#### **Defining 'Domestic Worker'**

The only definition of a domestic (household) worker under the laws of Bangladesh can be found in the Domestic Servants' Registration Ordinance, 1961 [1]. It says that 'domestic servant' includes every person who renders domestic services (i.e. services pertaining to household affairs) to his employer in lieu of wages or any other consideration [2]. Recently enacted the Domestic Violence (Prevention & Protection) Act, 2010 also does not cover domestic workers under its purview. Only the Domestic Servants' Registration Ordinance, 1961 defines them as domestic servant among all other laws in this country. However, the law again does not ascertain any of the rights or duties of the domestic (household) workers rather it merely deals with the provision of registration. The term "Domestic worker" is a very recent trend to recognize them as worker. Formally the Domestic Workers Convention, 2011 (Convention No. 189 of ILO) first recognizes domestic work as "work" and persons engaged in this sort of work as worker and also introduces a set of rights for these workers. This work may comprise cleaning house, cooking, washing, taking care of children/elderly/sick members of a family, etc.

Accordingly, domestic work implies work carried on in and around the home such as cooking, cleaning, and shopping [3]. A domestic worker is a person who is involved in domestic work in a home which is not her own and expects in return some sort of earning, whether in cash or otherwise. This definition cannot be a guide for our purpose. The word 'servant' is a derogatory term and should not be used in the light of present social mores. Furthermore, the definition needs to be expanded. Although the entire informal sector cannot be included in the legal discourse relating to domestic workers, many categories not commonly regarded, as domestic workers should be included in the definition so that legal protection can be given [4]. Apparently, the identifying criteria should not be working in 'household' but 'working in a household or doing similar works'. Again, presence of 'wages' should not be an identifying factor at all. The most important criteria should be whether he/she is working for their own family or for someone else. Thus, for the purpose of the present paper, domestic worker shall mean a person doing household works or similar types of work for someone who is not her immediate family and who is not recognized as a laborer of the formal sector [5]. In fine, domestic workers' work may comprise cleaning house, cooking, washing, taking care of children/elderly/sick members of a family, etc.

#### **Methodology**

As objective of the study shows the present situation of the rights of the domestic (household) workers and its protection under the existing enactments of Bangladesh, methodological interpretation has been added to analyze the relevance of the study, thereby suggesting new horizon of legal framework for

---

*Protection of the Rights of the Domestic (Household) Workers of Bangladesh: A Systematic Approach*

these wretched classes. In completing the study, I mainly rely on secondary sources based on specific literatures relevance to the study topic. And I frame the analytical reasoning and way out exclusively depending on the existing laws, international agreements, different books, opinions of prominent jurists, verdicts of judiciary, data of relevant organizations, and websites, etc.

**The Existing Legal Regime of Domestic Workers**

Though there is no special law on domestic (household) workers but constitutional provision has guaranteed some rights as fundamental rights and enforceable by the court for every citizen of the country. Also there are few ordinary laws, which can defend the rights of domestic (household) workers as an ordinary citizen of Bangladesh. Among those, the Prevention of Oppression against Women and Children Act, 2000 can be used to punish and prevent death, attempt to murder, grievous hurt or mutilation by using corrosive, incendiary or poisonous substances (especially throwing of acid), trafficking of women for prostitution and allied matters, trafficking and stealing of children, rape, etc. Although this Act of 2000 covers many aspects relevant for domestic workers, it was promulgated to safeguard women and children in general and no specific attention was given to the domestic workers. Now I would like to specifically sketch out existing laws and policies as shown in different formal and informal institutional framework:

**The Constitution of Bangladesh:** The Constitution of the People's Republic of Bangladesh is a document with a system of western democracy, rule of law and recognition of human rights. This is a constitution adopted, enacted, and given by the people for themselves [6]. Thus, the constitutional spirit mandates that the rights of the underprivileged sections of the society are guaranteed, including those of the domestic (household) workers. One of the four guiding principles of the constitution is 'socialism meaning economic and social justice' [7]. The preamble says that it shall be a fundamental aim of the state to realize through the democratic process a socialist society free from exploitation, a society in which the rule of law fundamental human rights and freedom, equality and justice, political, economic, and social will be secured for all citizens. The fundamental principles of state policy, as declared in Part II of the Constitution of Bangladesh, are not judicially enforceable in the courts of law [8]. However, these principles shall be fundamental to the governance of Bangladesh, shall be applied by the state in making of laws, shall be a guide to the interpretation of the constitution and of the other laws of Bangladesh and shall form the basis of the work of the state and its citizens [9]. A number of the fundamental principles are very relevant for domestic (household) workers. Article 11 declares that fundamental human rights, freedoms, and respect for the dignity and worth of the human persons shall be guaranteed. Article 14 states that it shall be a fundamental responsibility of the state to emancipate the toiling masses, the peasants and workers, and backward sections of the people from all forms of exploitation. Article 15 declares that the state has fundamental responsibility to ensure the provision of basic necessities, right to

work at a reasonable wages, right to reasonable rest, recreation and leisure and right to social security. Article 17 provides for free and compulsory education. Article 20 declares that work is a right, a duty and a matter of honor for every citizen. Everyone shall be paid for his work on the basis of the principle 'from each according to his abilities, to each according to his work'. It further says that the state shall endeavor to create conditions in which human labor in every form, intellectual and physical, shall become a fuller expression of creative endeavor and of the human personality. Part III of the Constitution of Bangladesh declares the fundamental rights. These rights are enforceable by the Supreme Court of Bangladesh under its writ jurisdiction [10]. Domestic workers (household) are entitled to enjoy all the fundamental rights, but some are very relevant for domestic (household) workers. Article 27 declares that all citizens are equal before the law and are entitled to equal protection of law. Article 28 states that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, or place of birth. Women shall have equal rights with men in all spheres of the state and of public life. However, it further states that nothing shall prevent the state from making special provision in favour of women or children or for the advancement of any backward section of citizens. Thus, the constitution clearly allows statutes endorsing 'affirmative action' for backward sections of citizens such as domestic workers. Article 31 says that to enjoy the protection of the law, and to be treated in accordance with the law, and only in accordance with the law, is the inalienable right of every citizen. No action detrimental to the life, liberty, body, reputation, or property of any person shall be taken except in accordance with the law. Article 32 guarantees right to life and personal liberty. Article 34 prohibits all forms of forced labour. Article 36 guarantees freedom of movement. Article 37 declares freedom of assembly. Article 38 is also very relevant as it says that every citizen shall have the right to form associations of unions. Article 39 safeguards freedom of thought, conscience, and speech. Article 41 guarantees freedom of religion. Article 43 declares, among other things, privacy of correspondence and communication. In case of violation of any of the fundamental rights, which are to be interpreted in the light of the preamble and the fundamental principles, the aggrieved person can file a writ petition before the High Court Division. Apart from the fundamental rights guaranteed under the constitution, every person has legal rights recognized by various statutes. The High Court Division may also be moved for legal rights violated by the government if there is no other equally efficacious remedy. The recent developments of public interest litigation has widened the scope even further, now any person can move the court representing the interests of the underprivileged or the underrepresented provided that his intentions are bonafide.

**The Domestic Servants' Registration Ordinance, 1961:** The only statute directly dealing with the domestic workers is 'The Domestic Servants' Registration Ordinance 1961' [11]. The purpose of this Ordinance, as the title suggests, is to oblige domestic workers to register with the police. It is however interesting that this Ordinance was made applicable for only 5 police stations of the Dhaka Metropolitan area. Apart from registering, this Act comprising of

*Protection of the Rights of the Domestic (Household) Workers of Bangladesh: A Systematic Approach*

only 9 sections, do not touch any other aspect. Apparently, the purpose of the statute of 1961 was not to improve the fate of domestic workers, but to assist the employers to track down the domestic workers in case they commit any offence and run away. Even in the area of its jurisdiction, the five police stations, the Act is not implemented and the domestic workers do not actually register with the police [12].

**The Labour Laws:** The labour laws in Bangladesh formerly consisted of various statutes, each dealing with one or more aspects. The Labour Act, 2006 was promulgated repealing most of the earlier statutes and modifying some others [13]. This single statute now provides almost the entire labour law related provisions applicable in Bangladesh [14]. The Labour Act excludes domestic workers from its ambit. Section 1(4)(Na) expressly says that the law shall not be applicable to domestic workers [15]. The implication of this provision is very clear. Domestic (household) workers cannot claim any of the rights guaranteed under the Act of 2006. Furthermore, there is no scope for them to go to the labour courts. It is very interesting to note that in certain cases, the Act of 2006 actually goes backwards. For example, the Minimum Wages Ordinance, 1961 [16], included domestic workers within its definition or workers and as such their minimum wages could be fixed through the mechanism provided by the Ordinance. The Act of 2006 has repealed this Ordinance and incorporated in chapter 11 the provisions of the Ordinance including formation and functions of a Minimum Wage Board. Under the Act of 2006, the domestic workers have been excluded. Similarly, the Children (Pledging of Labour) Act, 1933 [17], provided that all agreements to pledge the labour of children were void. This was also repealed by the Act of 2006 without making any alternative for the domestic workers [18]. While it shows that the domestic workers are excluded from the formal labour sector, there is no indication in the Act as to what other remedies they may claim being members of the informal sector. It is discussed below in an appropriate place the wisdom of including or excluding them in the formal sector.

**The Laws of Contract and Service and Civil Remedies:** Whenever a domestic worker starts to work in a household, there is an agreement between the employer and the worker. This agreement is almost always unwritten. Yet it cannot be ignored that there is an understanding between the parties. The most important terms of the understanding is often the amount of money the worker will get at the end of the month as salary. There may be other terms such as how many times she can take a vacation to visit her village home, how many times she will be given new clothes by the employer etc. Accordingly, even if not formal, written or exhaustive, the parties enter into an agreement. This agreement is enforceable under the Contract Act, 1872. This is a service contract, which the law courts must recognize. Under the previously mentioned service contract, the relationship between the domestic worker and her employer is one of 'master-servant relationship', as is known in the parlance of law. Under this relationship, the employer is always the dominant partner and can impose favourable terms. But as long as the employer follows

the terms agreed between the parties, the worker cannot protest. The employer however has certain limitations under the established legal principles. For example, he cannot violate the fundamental right of a worker even when the worker agrees to surrender the right [19]. Again, a worker cannot be dismissed on ground of any default unless given an opportunity of fair hearing. [20]. It follows that in case of any violation of the service contract, or any injury sustained by the worker, a case of compensation can be filed before the civil courts. The civil courts also have power to issue directions and declare any action taken by an employer to be illegal. The legal provisions are thus not ambiguous. But the problem lies in implementing these provisions since it depends upon each individual contract between the employer and the domestic worker. Clearly, the problem lies in implementation and enforcement. We shall discuss below why the legal provisions are totally ineffective in a separate sub-chapter.

**Criminal Laws:** Any act that has been defined by law as a crime is punishable by the courts of law. Apart from the Penal Code 1860, many other laws define criminal acts. All criminal acts are adjudicated by criminal courts and the domestic workers, like any other citizen, are under the jurisdiction of the criminal courts [21]. Under the Penal Code, especially relevant for the domestic workers are culpable homicide (section 299), murder (section 300), hurt (section 319), grievous hurt (section 320), wrongful restraint (section 339), wrongful confinement (section 340), assault (section 351), kidnapping (section 359), abduction (section 362), rape (section 375) and theft (section 378) [22]. These and many other provisions of criminal law apply to domestic workers in the same way in which they apply to other citizens. There is however no statute that specifically deals with domestic (household) workers and declares an act to be a criminal act considering the special circumstances of the domestic workers.

**The Children Act, 1974:** The Children Act, 1974 is the major legislation that aims to protect children [23]. This statute provides for the creation of juvenile courts and a separate system of trial for the children. It provides for probation officers, establishment, and operation of certified institutions for offender children, protection of their privacy, their custody during and after trial, etc. Since a considerable portion of the domestic workers are children, the Act is very relevant in safeguarding their rights and interests [24]. Section 34 of the Act has special relevance as it provides for penalty when a child is assaulted, ill-treated, or neglected by a person having charge or care of the child [25]. The remedy, being imprisonment for two years and/or fine not exceeding taka on thousand, however is very minimal. Section 44 provides that if a person secures a child ostensibly for the purpose of menial labour in a factory or other establishment, but in fact exploits the child for his own ends, withholds or lives on his earnings, shall be punishable with fine, which may extend to one thousand taka. Another very important provision under the Act is contained in sections 55-61 under which a probation officer, police officer not below the rank of assistant sub-inspector or a person authorized by the government may take a child to a place of safety in respect of whom there is reason to believe that an

*Protection of the Rights of the Domestic (Household) Workers of Bangladesh: A Systematic Approach*

office has been committed or is likely to be committed. Information about the child may be given by any person such as a neighbour or a conscious citizen. The child will be produced before a court and the court will decide whether the child can be given back to its parent or guardian. The court may also send the child to a certified institute. The court may also issue a warrant to search for a child. These provisions, if properly followed, can be used by any conscious citizen to save child domestic workers from torture and abuse even when the child's natural parents are absent or silent.

**The Prevention of Oppression against Women and Children Act, 2000:** The Prevention of Oppression against Women and Children Act, 2000 [26] was promulgated to take stringent measures against crimes oppressing women and children [27]. Many of the provisions of this statute deal with issues that are relevant for domestic workers. Section 4 deals with death, attempt to murder, grievous hurt or mutilation by using corrosive, incendiary or poisonous substances (especially throwing of acid). Section 5 deals with trafficking of women for prostitution and allied matters. Section 6 provides for trafficking and stealing of children. Section 7 deals with kidnapping and abduction of women and children. Section 9 deals with rape and section 9A covers situations where women are led to suicide because of acts of others. Section 13 provides for children born after rape. Section 14 protects privacy of women and children from media exposure. The punishments for the crimes defined under the Act are very stringent. The Act forms a tribunal to effectively adjudicate these matters and provides for detailed procedures. Although the Act of 2000 covers many aspects relevant for domestic workers, it was promulgated to safeguard women and children in general and no specific attention was given to the domestic (household) workers.

**The Primary Education (Compulsory Provisions) Act, 1990:** Under the Primary Education (Compulsory Provisions) Act, 1990 [28], the government has the power to declare primary education compulsory for a child for such area of the country as may be determined by the government. The guardians are made liable unless prevented by reasonable excuse. Under this law, primary education of all children is sought to be ensured through forming 'compulsory primary education committee' in the local government level. A child domestic worker's primary education is thus now a compulsory provision for which the local government is responsible.

**Measuring the Effectiveness of the Present Laws**

The preceding discussions demonstrate there are already a number of legal provisions, which are relevant for the domestic workers, but there is no law, which is specifically designed for them. It is also apparent that the existing provisions, so far as they are relevant for the domestic (household) workers, are not sufficient and do not cover all the needs and expectations of this vulnerable group. Provisions that the law should provide for the domestic workers shall be examined below, but first we examine a number of reasons why the present legal provisions remain ineffective.

The first category of reasons relates to the gap of knowledge and lack of right-consciousness leading to non-assertion of rights. Domestic (household) workers are not generally educated, informed, or conversant about their rights; let alone how to implement these rights. Once a vulnerable group is conscious about their rights, they create a social or group pressure upon the system to shape a positive environment. This is the first pre-requisite of implementing legal provisions. A domestic (household) worker, for example, does not even know that he/she has a right to get primary education. Thus, the question of asserting his/her rights through the compulsory primary education committee of his/her area does not arise at all. Again, due to the very nature of their job and due to their very vulnerable position, domestic workers are not organized into unions or labour organizations. Thus, there is hardly any organized effort to increase their right-consciousness.

The second category of reasons relates to the unequal strength of the contending parties- the domestic worker (household) and her employer. The extreme disparity of education, wealth and social position means that the domestic worker does not find it wise to complain against an employer. The legal system is designed to treat everyone equally without taking into consideration the extra legal factors such as, ability to afford legal counsel or payment of court fees. Thus, the so called 'equal treatment' actually perpetuates inequality. Domestic (household) workers cannot get any relief where the legal system refuses to provide a special procedure and remains blind to the desperate strength of the worker and her employer.

The third category of reasons relates to the cost and delay of the legal system. This is a problem that applies to all types of cases, but it is more disheartening for a vulnerable group like domestic (household) workers.

It is not possible, for example, for a domestic worker to file a suit for compensation by depositing court fees. Such a civil suit may remain pending for six-seven years. Take another example a worker who was denied her salary amounting to Taka 5000. There is no legal procedure available that will recover the money in a cost-effective way-the expenses of a legal process will be several times more than the money claimed. Thus, even for the legal aid programs, these are unattractive cases. Cost, delay, and formality of procedure are also problems under the writ jurisdiction. Even in case of criminal cases where the state is the complainant party, problems of cost and delay exists along with some other added complications. A domestic worker is easily intimidated by the presence of an investigating police officer. Again, when the court date is fixed, the domestic worker will have to take her day off losing her income for the day. In fact, due to the dual problems of cost and delay, vulnerable groups such as domestic workers avoid the law courts including civil and criminal courts. Even the special laws do not provide for a procedure immune from the cost and delay problem. Thus, even under the Children Act, 1974 or the Prevention of Oppression against Women and Children Act, 2000 there are very few cases where the domestic worker is the complainant. They generally do not move the law courts unless the crime is a serious one where the police take over and a criminal case is started.



*Protection of the Rights of the Domestic (Household) Workers of Bangladesh: A Systematic Approach*

**Changing Previous Laws or Passing a Pristine New Law**

There are two possible ways in which the rights, benefits, and privileges of domestic (household) workers can be brought under legal provisions. The first one is to incorporate appropriate provisions under the various laws [29]. The second one is to pass a new statute solely for this purpose. The first idea, amending the old laws and adding provisions to them, may not be very satisfactory for several reasons. The demands and expectations resulting from the recent social advancements can hardly be expressed through amendments. As a vulnerable group, declaration of certain rights especially applicable to the domestic workers is a dire necessity, amendments will not be appropriate for this type of law-making. Again, including the domestic workers under the Labour Act, 2006 is probably not a good solution. There are too many provisions in the Act that will be inapplicable to the domestic (household) workers. In fact, the Act of 2006 was designed for workers of the formal sector and the domestic workers of the informal sector were kept outside its purview in order to avoid contradictions, confusions, and problems of implementation through the mechanisms of the labor courts. The procedure under the labor court is surely too cumbersome, complicated, time consuming and costly for a lone woman working in a household. Thus, we fall back to the second idea, making a new statute solely for the domestic workers. Under the constitution, for any backward or vulnerable section of the society, the state can promulgate special laws [30]. A special law can identify problems specifically faced by the section of citizens for whom the law is designed. It can create civil liability for the government as well as for private individuals. It can also declare an act to be a criminal act and determine punishment for the same. Finally, a special law can lay down a special remedial procedure particularly applicable and appropriate for the beneficiaries.

**The Way Ahead: Legislating for the Domestic Workers**

Bangladesh is obliged under both national and international law to protect and promote the rights and interests of the domestic (household) workers. Hence, Bangladesh should become a signatory state to the Convention No. 189 of ILO and should ratify the provisions into domestic law immediately. A special piece of legislation for the domestic workers could be a proper solution in this regard.

*Bangladesh National Women Lawyers Association (BNWLA) vs. Government of Bangladesh* is the first judicial pronouncement to uphold the rights of the domestic workers and recognize them as worker. The High Court Division directs that the children between the ages of 14 to 18, who are engaged in the domestic sector, should be incorporated automatically within the provisions of the Labour Act. There should be a system of registration and monitoring of all persons engaged in domestic work. It also declared that the cases relating to the violence upon the domestic workers must be monitored and prosecution of the perpetrators must be ensured by the government. The government has a duty to protect all citizens of this country, be they rich or poor.

Apart from this, a draft policy titled 'Domestic Workers Protection and Welfare Policy, 2010' had also been finalized by the Ministry for Labour and Employment. Despite the fact the policy is still under scrutiny and yet to be implemented by the authority.

#### **Domestic Worker Protection and Welfare Policy**

The government is close to finalizing a new Domestic Worker Protection Act and Domestic Worker Protection and Welfare Policy. While long overdue, it is encouraging to see some progress towards protecting some of Bangladesh's most vulnerable workers. The drafts cover important ground such as limiting working hours, stopping the employment of child workers and protecting domestic workers from physical, mental and sexual harassment. Registration of domestic workers will also become mandatory and it will entitle them to identity cards, fixed wages, fixed working hours, leave, education and training and medical care and compensation for accidents. If properly implemented, this will be a huge step forward for the 2 million domestic workers of Bangladesh who currently enjoy little to no rights. The fact is that incidents of abuse, torture, and even murder of domestic workers are all too common and deserve far more attention. Many Bangladeshis also work similar or worse problems when working as domestic help abroad. The government should ratify the ILO Convention on Domestic Workers to help it to defend citizens' rights abroad as well. Domestic (household) workers are not only a huge part of our workforce, but also they are an integral part of the lives of most Bangladeshi families. Changing the status quo to improve their working conditions will require not only changes in laws but also vigilant implementation and change in societal norms. However, this is a process we must go through if we are to evolve towards a more just and egalitarian society.

#### **Recommendations**

On the basis of literature reviews and analytical reasoning, following suggestions might be appropriate:

- Disparate works from social, economic, or medical perspective in the field should be brought together, along with experts who are dealing with these matters, to work with the lawyers. Through exchange of information and experience, a collective effort can proceed to outline a model draft law. My recommendation is thus to create, from the non-profit sector, a committee of experts for drafting of a model law on domestic (household) workers.
- A strategy of receiving feedback from all sectors of the society will have to be developed. After going through a process of participation by all stakeholders, a draft should be prepared. This will be one big step in the movement to ameliorate the conditions of the domestic (household) workers—the ultimate under-represented and disenfranchised in our society.
- The authority might approve draft Domestic Worker Protection and Welfare Policy, 2010.

*Protection of the Rights of the Domestic (Household) Workers of Bangladesh: A Systematic Approach*

- We all should come forward to protect rights of domestic (household) workers based on constitutional obligation and beyond.
- Domestic work should be included in the list of hazardous works.
- 2011's High Court Division's directive on protection of domestic workers should be considered law until a law is adopted in this regard.
- Victims should be given support in the earliest possible time if they seek help.
- Domestic (household) workers should be registered.
- Employers of domestic workers and concerned people should be made aware of rights of domestic (household) workers on a regular basis.
- Employing children in domestic work is a problem of our society, culture, and economy. As a consequence initiatives have to be taken at first to keep child domestic workers away from exploitative and dangerous works and to provide all of them safe and decent working environment, appointment letter, identity card and other necessary things to ensure the payment of their due wages and other rights as worker like other workers.
- In addition, sufficient help centers should be established in different parts of the country where domestic (household) workers can seek help in cases of cruelty, violence and violation of their rights.

**Conclusion**

Domestic (household) work is particularly isolated in nature as it is carried out in the home of the employer. Domestic service thus needs to come under some forms of private and public regulation, inspection, and supervision. Hence, to protect the rights of domestic (household) workers there needs to be a sound place and functioning institutional framework that will ensure the enforcement of legal provisions and policies. The study has found out the common scenarios of domestic workers, existing laws, policies relating to the protection of the domestic workers from analyzing data and relevant literatures. All these documental evidences shows the notorious conditions of these classes and these also shows whatever policies and programs were taken are not adequate for the protection of their rights. However, mere enactment of a new law may not well enough to bring changes to these classes in terms of their societal position and dignity. The existing laws in order to demonstrate the laws relevant for domestic (household) workers are lacking both in terms of substantive provisions as well as in terms of implementation procedure. It is ascertained that a special legislation for the domestic (household) workers is the best solution. The study also suggests that firstly we need to change our mind set-up; otherwise, the scenario will remain same. A more humanitarian approach towards the domestic workers can ensure more contentment in the mind of them. In fact, the study solely suggests incorporating both humanitarian approach and enactment of laws to protect the domestic (household) workers. But despite the notable

research orientation of concerned people with humanitarian aspects, there is yet wide scope to conduct further legal research in the field of laws on domestic (household) workers.

### References

- [1] Ordinance No. XLIV of 1961.
- [2] See section 2(a) of the Ordinance of 1961. This definition do not attempt to define 'household affairs' and thus can be interpreted in a very wide sense including guards, gardeners, vehicle drivers, etc.
- [3] The ILO Thesaurus 2005 defines domestic work as work done primarily to maintain households, it includes the provision of food and other necessities, cleaning, caring for children and the sick and elderly, etc. Retrieved from <http://www.ilo.org/public/libdoc/ILO-thesaurus/english/tr2768.htm> on 28<sup>th</sup> December, 2009.
- [4] The concept of two distinct 'formal' and 'informal' sectors of labour has often been criticized arguing that such categorization may result in deprivation of rights of those who are consciously kept out of the formal sector. See A Dualistic Labour System? A Critique of the 'Informal Sector', Jan Breman, *Economic and Political Weekly*, Vol.11, No. 48 (Nov. 27, 1976), pp. 1870-1876.
- [5] Thus, for example a child working in a small tea stall does not work in a home but should be given the legal protection accorded to the domestic workers. Again, earning something, whether in cash or kind, is not always an indication that a person is a worker. Many people work at homes simply in exchange of food and a place to sleep.
- [6] See the preamble of the Constitution of Bangladesh.
- [7] See the preamble and article 8 of the Constitution of Bangladesh. The Constitution of Bangladesh has been terms as an autochthonic constitution. See *Dr. Mohiuddin Farooque vs. Bangladesh* 49 DLR (AD) 1.
- [8] See articles 8-25 of the Constitution of Bangladesh.
- [9] For a legal exposition of the fundamental principles, see *Constitutional Law of Bangladesh*, Mahmudul Islam, 2<sup>nd</sup> Edition, Dhaka, Mullick Brothers, 2002, Pages 52-58.
- [10] Article 44 of the Constitution of Bangladesh says that the right to move the High Court Division is itself a fundamental right. The procedure of moving the High Court Division is laid down in article 102.
- [11] East Pakistan Ordinance No. XLIV of 1961.
- [12] Section 5 of the Act says that if a domestic worker fails to register with the police station, he shall be punished with simple imprisonment which may extend to one month or with fine which may extent to 100 taka or with both.
- [13] The Labour Act 2006, Act 42 of 2006. The repealing section 353 repeals 25 earlier statutes.
- [14] For a commentary on the labour laws, see the *Labour and Industrial Laws of Bangladesh*, Nirmalendu Dhar, Dhaka, ReMiSi Publications, 2007.
- [15] The Act uses the term in Bangla. We are using this term to mean domestic worker. However, one may argue that the term is the appropriate equivalent of the term domestic worker.

*Protection of the Rights of the Domestic (Household) Workers of Bangladesh: A Systematic Approach*

- [16] Ordinance No. XXXIV of 1961.
- [17] Act No. II of 1933.
- [18] Section 35 of the Act of 2006 incorporates the provisions of the Act of 1933 for children who are not domestic workers.
- [19] For example the father of girl-child, who is a domestic worker, may permit the employer to beat her. This permission itself is illegal as it amounts to cruel, inhuman, and degrading punishment or treatment under article 35(5) of the Constitution of Bangladesh. A person cannot surrender her fundamental rights.
- [20] This is known as the principle of natural justice— that nobody should be condemned unheard.
- [21] For criminal procedure, see *Law and Practice of Criminal Procedure*, Zahirul Huq, 8<sup>th</sup> Edition, Dhaka, Bangladesh Law Book Company, 2003.
- [22] For commentary on specific sections of the Code, see *The Penal Code: Latest Amendments, Decisions and Commentaries*, Siddiqur Rahman Miah, Dhaka, New Warsi Book Corporation, 2001.
- [23] See, the Children Act 1974, Shahdeen Malik, Dhaka, Save the Children (UK), 2004.
- [24] For a brief survey of the legal provisions regarding child domestic workers in the South Asian countries, see *Reaching behind closed doors: A survey of legal and policy responses to child domestic labour in South Asia together with recommendations for reform*, Delhi, ILO, 2006.
- [25] Section 34 says-“If any person over the age of sixteen years, who has the custody, charge or care of any child assaults, ill-treats, neglects, abandons or exposes such child or causes such child to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child unnecessary suffering or injury to his health, including loss of sight or hearing or injury to limb or organ of the body and any mental derangement, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to taka one thousand, or with both.”
- [26] Act VIII of 2000.
- [27] For a recent study on women domestic workers, see *Action Brief: Getting it right: Struggles, stories and strategies from Dhaka’s informal women workers*; London, Partnership of Women in Action and One World Action, 2009.
- [28] Act 27 of 1990.
- [29] There is always a strong demand to amend the law. In a recent dialogue under the title 'Ensuring Domestic Workers Rights: Stand Now,' held on 09.11.2009 at CIRDAP, Dhaka organized by the Domestic Workers Rights Network-Bangladesh(DWRN), the speakers stressed on amending the Labour Act 2006.
- [30] See article 28(4) of the Constitution of Bangladesh. This article especially mentions children and women.