

# **Safeguarding the rights of domestic workers: Existing laws and ways to move forward<sup>1</sup>**

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## **Introduction**

Domestic workers in any country form a marginalized and highly vulnerable group – this is especially so in Bangladesh.<sup>2</sup> They are not only disadvantaged, but also disenfranchised. The situation is 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 suffer in silence when these rights are violated. They work very long hours without any specified working conditions. 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. For the political parties, the domestic workers are simply not in the agenda.

The present paper aims to identify the existing legal regime with respect to the domestic workers. Who are the domestic workers? What are their constitutional and legal rights? Do they have an effective legal remedy if their rights are violated? How and to what extent should the legal provisions be changed to address these issues? What should be the shape of a statute, if any, designed to protect their rights? By discussing the answers to these questions,

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<sup>1</sup> This paper is a part of the project ‘Promoting the rights of domestic workers’ implemented in 2009 by Democracywatch and sponsored by the International Labour Organization.

<sup>2</sup> Or a comparative analysis of the conditions of work and employment of domestic workers in 67 countries, see the working paper *Domestic work, conditions of work and employment: A legal perspective*, J. M. Ramirez-Machado, *Conditions of Work and Employment Series No. 7*. Geneva, ILO, 2003.

this paper will attempt to identify the ways to move forward and create a better legal regime applicable to the domestic worker situation.

### **Defining ‘domestic worker’**

The only definition of a domestic worker under the laws of Bangladesh can be found in the Domestic Servants’ Registration Ordinance 1961.<sup>3</sup> 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.<sup>4</sup>

Accordingly, domestic work implies work carried on in and around the home such as cooking, cleaning and shopping.<sup>5</sup> 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

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<sup>3</sup> Ordinance No. XLIV of 1961.

<sup>4</sup> See section 2(a) of the Ordinance of 1961. This definition does not attempt to define ‘household affairs’ and thus can be interpreted in a very wide sense including guards, gardeners, vehicle drivers etc.

<sup>5</sup> 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 December 2009.

be included in the definition so that legal protection can be given.<sup>6</sup> 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 she is working for her 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.<sup>7</sup>

### **The Existing Legal Regime**

#### *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.<sup>8</sup> Thus the constitutional spirit mandates that the rights of the underprivileged sections of the society are guaranteed, including those of the domestic workers.

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup>See the Preamble of the Constitution.

One of the four **guiding principles** of the constitution is ‘socialism meaning economic and social justice’.<sup>9</sup> 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, are not judicially enforceable in the courts of law.<sup>10</sup> 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.<sup>11</sup>

A number of the Fundamental Principles are very relevant for domestic workers. Article 11 declares that fundamental human rights and 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

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<sup>9</sup> See the Preamble and also Article 8. The Constitution of Bangladesh has been terms as an autochthonic Constitution. See *Dr. Mohiuddin Farooque v. Bangladesh* 49 DLR (AD) 1.

<sup>10</sup> See Article 8-25.

<sup>11</sup> 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.

a matter of honour 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 endeavour to create conditions in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavour 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.<sup>12</sup> Domestic workers are entitled to enjoy all the Fundamental Rights, but some are very relevant for domestic 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,

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<sup>12</sup> Article 44 says that the right to move the High Court Division is itself a Fundamental Right. The procedure of moving the Court is laid down in Article 102.

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 *bona fide*.

#### *Ordinance XLIV of 1961*

The only statute directly dealing with the domestic workers is ‘The Domestic Servants’ Registration Ordinance 1961’.<sup>13</sup> 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 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.<sup>14</sup>

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<sup>13</sup> East Pakistan Ordinance No. XLIV of 1961.

<sup>14</sup> 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.

### *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.<sup>15</sup> This single statute now provides almost the entire labour law related provisions applicable in Bangladesh.<sup>16</sup>

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.<sup>17</sup> The implication of this provision is very clear. Domestic 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<sup>18</sup> 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<sup>19</sup> provided

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<sup>15</sup> The Labour Act 2006, Act 42 of 2006. The repealing section 353 repeals 25 earlier statutes.

<sup>16</sup> For a commentary on the labour laws, see the *Labour and Industrial Laws of Bangladesh*, Nirmalendu Dhar, Dhaka, ReMiSi Publications, 2007.

<sup>17</sup> The Act uses the term গৃহ পরিচারক in Bangla. We are using this term to mean domestic worker. However, one may argue that the term গৃহকর্মী is the appropriate equivalent of the term domestic worker.

<sup>18</sup> Ordinance No. XXXIV of 1961.

<sup>19</sup> Act No. II of 1933.

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.<sup>20</sup>

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. We will be discussing 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 aforesaid 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

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<sup>20</sup> Section 35 of the Act of 2006 incorporates the provisions of the Act of 1933 for children who are not domestic workers.



legal principles. For example, he cannot violate the fundamental right of a worker even when the worker agrees to surrender the right.<sup>21</sup> Again, a worker cannot be dismissed on ground of any default unless given an opportunity of fair hearing.<sup>22</sup>

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.<sup>23</sup>

Under the Penal Code, especially relevant for the domestic workers are culpable homicide (section 299), murder (section 300), hurt (section 319),

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<sup>21</sup> 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. A person cannot surrender her fundamental rights.

<sup>22</sup> This is known as the principle of natural justice – that nobody should be condemned unheard.

<sup>23</sup> For criminal procedure, see *Law and Practice of Criminal Procedure*, Zahirul Huq, 8<sup>th</sup> Edition, Dhaka, Bangladesh Law Book Company, 2003.

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).<sup>24</sup>

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 workers and declares an act to be a criminal act considering the special circumstances of the domestic workers.

#### *Special laws – Children and Women*

**The Children Act 1974** is the major legislation that aims to protect children.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> The remedy, being imprisonment for two years and/or fine not

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<sup>24</sup> 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.

<sup>25</sup> See *The Children Act 1974*, Shahdeen Malik, Dhaka, Save the Children (UK), 2004.

<sup>26</sup> 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.

<sup>27</sup> 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

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 offence 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 **Nari O Shishu Nirjatan Daman Ain 2000**<sup>28</sup> was promulgated to take stringent measures against crimes oppressing women and children.<sup>29</sup> Many of the provisions of this statute deal with issues that are relevant for domestic

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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.”

<sup>28</sup> Act VIII of 2000.

<sup>29</sup> 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.

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 lead 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 workers.

Under the **Primary Education (Compulsory Provisions) Act 1990**<sup>30</sup>, 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 workers, are not sufficient and do not cover all the needs and expectations of this vulnerable

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<sup>30</sup> Act 27 of 1990.

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 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 worker, for example, does not even know that she has a right to get primary education. Thus the question of asserting her rights through the compulsory primary education committee of 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 relate to the **unequal strength of the contending parties** – the domestic worker 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 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 relate 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 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 programmes, 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 Nari O Shishu Nirjatan Daman Ain 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.

The following chart, though not comprehensive, tries to summarize the problems of implementation and effectiveness of the present laws -

<b>Relevant legal forum</b>	<b>Limitations</b>	<b>Problems of implementation</b>
Constitutional remedy of Writs under Article 102 of the Constitution	1. Writs can be filed only in case of violation of fundamental rights or violation of legal rights where there is no other equally efficacious remedy. Thus criminal matters (such as rape or murder) are excluded.	1. It is a legal procedure on the basis of affidavits and no trial, yet costly in terms of appointment of lawyer and other incidental expenses. 2. Although speedier than

	<p>Most civil matters such as claim for compensation are also barred for the same reason.</p> <p>2. Claims of legal rights in most cases are allowed only against the government, so for example writ does not lie for salary from a private employer.</p> <p>3. A very formal procedure is followed. The court conducts its proceedings in English.</p> <p>4. The court is located only in the capital city.</p>	<p>civil or criminal cases, it is still very slow and may take several years to get a remedy.</p>
The Domestic Servants' Registration Ordinance 1961	Do not provide any remedy, just directs registration of domestic servants with the police in certain areas.	Not relevant since the Ordinance provides no remedy.
The Labour Act 2006	Specifically states that 'domestic workers' are excluded from the ambit of the Act.	Not relevant since the Act is not applicable to domestic workers.
The laws of contract and service and other civil remedies	<p>1. There is no statute specifically dealing with the domestic workers recognizing their rights. Furthermore, the legal principles are scattered and has not been brought under any particular legislation.</p> <p>2. Unless agreed between the parties beforehand, available remedies are very limited. There is for example no minimum wages law or no law on leave with salary. These remedies could come under a civil law statute since the Labour Act 2006 does not apply.</p>	<p>1. The problem of establishing evidence through documents and witnesses is particularly problematic for a member of a vulnerable group, since the employment contracts are generally not in writing.</p> <p>2. Costly in terms of court fees, other court expenses and lawyer's fees.</p> <p>3. Very lengthy procedure including several steps of hierarchy of appeals and revisions.</p>
Criminal laws including the Penal Code 1860	1. Court can ensure punishment for crime but cannot give any other relief such as compensation or re-	1. Involvement of the police is an intimidating factor for the domestic workers.

	<p>instatement in job.</p> <p>2. None of the provisions have been designed specifically for the domestic workers.</p>	<p>2. Time consuming.</p> <p>3. Costly in most cases where a complaint case is filed. Regular attendance in court is expensive for the domestic workers.</p>
The Children Act 1974	<p>1. Applies to children only and not all domestic workers.</p> <p>2. Only a few provisions are relevant and do not cover all situations.</p>	<p>1. Costly.</p> <p>2. Time consuming.</p>
Nari O Shishu Nirjatan Daman Ain 2000	<p>1. Applies to children and women, not all domestic workers.</p> <p>2. Applies only to those crimes which are specifically dealt with under the Act.</p> <p>3. Deals with criminal acts only and do not deal with civil or labour law remedies.</p>	<p>1. Although a tribunal has been established, the remedy is not speedy.</p> <p>2. Costly in terms of lawyer's fees and other court expenses.</p> <p>3. As a result of severe punishment provisions, the courts are very stringent with respect to evidence. So the conviction level is very low.</p>

### **The way ahead: Legislating for the domestic workers**

#### *Changing old laws or passing a new law*

There are two possible ways in which the rights, benefits and privileges of domestic workers can be brought under legal provisions. The first one is to incorporate appropriate provisions under the various laws.<sup>31</sup> The second one is to pass a new statute solely for this purpose.

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<sup>31</sup> 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.



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 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 labour courts. The procedure under the labour 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.<sup>32</sup> 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.

*Proposed contents of the new statute*

**Definition and scope** of the term ‘domestic worker’ should be the wide enough following the principle of inclusion rather than exclusion. As has

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<sup>32</sup> See Article 28(4) of the Constitution of Bangladesh. This Article especially mention children and women.

already been discussed,<sup>33</sup> a person should be treated as a domestic worker even when she is working for a company and not for a household but doing menial works similar to domestic chores without enjoying the status of a labourer. Similarly, whether or not she gets salary or other emolument, she should be regarded as a domestic worker as long as she is working outside her family house.

The statute should declare a number of **rights to be enjoyed** by the domestic workers. The following list, even though not exhaustive, may be a starting point.<sup>34</sup>

1. The right to livelihood.
2. The right not to be employed as bonded labour.
3. Prohibition of discrimination in employment on grounds of religion, race, caste, creed, sex, place of birth or any other reason.
4. A minimum age of employment to be determined by the government.
5. The right for written contract with regard to terms and conditions of employment.
6. The right to minimum wages to be fixed by an independent Wage Board.<sup>35</sup>
7. The right to form unions for collective bargaining through appropriate mechanisms.

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<sup>33</sup> See above under the head '*Defining domestic worker*'.

<sup>34</sup> For a similar list for India, see the proposed draft bill titled *Domestic Workers (Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill 2008*, which was prepared by the National Campaign Committee for the Unorganized Sector Workers, as chaired by Justice V.R. Krishna Iyer.

<sup>35</sup> Bangladesh is listed by the ILO to be one of 10 countries where domestic workers are excluded from coverage of minimum wage legislation. See the *Global Wage Report 2008/2009: Minimum Wages and Collective Bargaining: Towards Policy Coherence*: Geneva, ILO, 2008.

8. The right to get occupational and other safety measures.
9. Right to get protection from sexual harassment at work place.
10. Right to get medical care, employment, injury benefit, maternity benefits, group insurance, housing, gratuity, bonus and pension benefits.

After declaration of the rights as above, the statute should enjoin the government to frame rules under which matters such as hours of work, weekly rest, annual leave with wages, suspension, disciplinary proceedings, discharge, termination and welfare measures will be prescribed. These rules will be applicable in all cases. Supplementing the rules, the employers will be obliged to execute contract in writing with the domestic workers. In absence of a contract in writing, certain terms and conditions shall be deemed to be automatically effective.

The proposed statute should provide for some sort of **Monitoring and Overseeing Body or Committee**. This body will have powers to make inspections (and enter into households), powers to negotiate with the employer and resources to make report and make recommendations to various relevant government authorities and to initiate dispute resolution proceeding on behalf of any worker. Such a body shall work relatively informally and shall consist of local representative, members of the civil society, government servants and NGOs and shall operate within its local territorial jurisdiction.

**Dispute resolutions** should be simple and out of court so far as is practicable. In each District or Union, a dispute resolution Court should be formed with judicial as well as some quasi judicial powers. Instead of going through a formal legal procedure, this Court should have powers of summary trial like mobile courts. The parties will go to the regular courts of law only for serious offences. The court shall also have power to refer any criminal matter to the appropriate criminal court when it is satisfied that a crime has been committed under the Penal Code or any other relevant law.

As has been indicated above, the statute should also include a number of **social welfare measures**. The most important of these is of course medical insurance for the domestic workers. The form and modality of such scheme needs further exploration. Welfare measures may also include state sponsored and employer assisted pension schemes. Creation and operation of job placement agencies are also important. Vocational training and guidance may also be considered as a welfare measure.

### **Concluding remarks**

The present paper attempted to outline the existing laws in order to demonstrate that the laws relevant for domestic workers are lacking both in terms of substantive provisions as well as in terms of implementation procedure. We have concluded by asserting that a special legislation for the domestic workers is the best solution. This paper very briefly discusses the possible contents of such legislation.

There is yet wide scope to conduct further legal research in the field of laws on domestic workers. 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.

Our recommendation is thus to create, from the non-profit sector, a committee of experts for drafting of a model law on domestic 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 workers – the ultimate under-represented and disenfranchised in our society.