

SAFEGUARDING THE RIGHTS OF DOMESTIC WORKERS: EXISTING LAWS AND WAYS TO MOVE FORWARD ¹

Naim Ahmed*

ABSTRACT

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 modified to address these issues? By examining the answers to these questions, the present paper argues that the existing laws relevant for domestic workers are lacking both in terms of substantive provisions as well as in terms of implementation procedure. While attempting to identify the ways to move forward and to create a better legal regime, it is asserted that a special legislation providing special laws and procedures for the domestic workers is the best solution. The possible contents of such proposed legislation is discussed briefly. The paper concludes with an observation that since the domestic workers do not count as a pressure group, the human rights activists, specialists in the field, social workers, voluntary sector organisations and NGOs must take a concerted effort to form favourable public opinion and influence law making.

¹ This paper is a modified version of a report prepared under the project 'Promoting the rights of domestic workers', implemented in 2009 by Democracywatch and sponsored by the International Labour Organization. The key report was presented in a national level opinion exchange meeting titled গৃহকর্মীদের অধিকার সংরক্ষণ: বিদ্যমান আইন ও ভবিষ্যৎ কর্মপন্থা organised by the Gender Resource Center of Democracywatch held on 5th January, 2010 at the VIP Lounge of the National Press Club.

* **Naim Ahmed, PhD** is an Advocate, Supreme Court of Bangladesh.

INTRODUCTION

Domestic workers in any country form a marginalised and highly vulnerable group – this is especially so in Bangladesh.² 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. Working hours are very long without any specified working conditions. In general, there is no way to ventilate grievances. Domestic workers 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 have not been effective or relevant enough to bring any meaningful change. For the elite and powerful in society, the domestic workers are simply not on 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 modified to address these issues? What should be the shape of a statute, if any, designed to protect their rights? By examining the answers to these questions, 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 the term ‘domestic worker’ under the laws of Bangladesh can be found in the Domestic Servants’ Registration Ordinance 1961.³ 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.⁴

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

³ Ordinance No. XLIV of 1961.

⁴ 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.

Accordingly, domestic work implies work carried on, in and around the home such as cooking, cleaning and shopping.⁵ 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 wider legal protection can be offered.⁶ Apparently, the identifying criteria should not be working in a 'household' but 'working in a household or doing similar works'. Again, presence of 'wages' should not be an identifying factor at all.⁷ The most important criteria should be whether she is working for her own family or for someone else and whether her work is done voluntarily or under compulsion to earn a living.

Thus, for the purpose of the present paper, domestic worker shall mean a person doing household works or similar types of work, not voluntarily but in order to earn a living, for someone who is not her immediate family and who is not recognised as a labourer of the formal sector.⁸

⁵ 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., at <http://www.ilo.org/public/libdoc/ILO-Thesaurus/english/tr2768.htm> (Last visited on December 28, 2009).

⁶ The concept of two distinct 'formal' and 'informal' sectors of labour has often been criticised arguing that such categorisation may result in deprivation of rights of those who are consciously kept out of the formal sector. See, Breman, J., "A Dualistic Labour System? A Critique of the 'Informal Sector'", 11 (Nov. 27, 1976) *Economic and Political Weekly*, No. 48, pp. 1870-1876.

⁷ If not paid for wages, a person is perhaps a bonded labourer or a slave instead of a domestic worker.

⁸ 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.