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Domestic Workers forming a large part of Informal Economy in Bangladesh:  
Can formalization of this sector contribute to the development of Bangladesh?

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# Summary

This thesis examines whether formalization of the domestic work sector in Bangladesh can contribute to the development of the country by effectively reducing the problems which these workers face. The aim of the research is to ascertain whether current law, policy and practice are conducive for ensuring decent work for domestic workers or measures towards formalization are required to be taken to provide better protection for these workers.

Research shows that domestic workers of Bangladesh are usually appointed without any form of formal contract between the workers and employers. As a result, most of these workers have to work under poor working conditions with a very low wage which creates obstacles to move towards ILO's decent work agendas for all the workers. Forced labour and worst forms of child labour are also common scenarios in Bangladesh. Moreover, informal appointments and lack of employment specificity result in number of different forms of violence that are regularly committed on this group of workers. The offenders often remain unpunished since these victims are usually not able to report the crimes committed on them mainly due to the facts that they belong to informal economy and there is no favourable law or policy framed for them. Therefore, this thesis examines whether barriers faced by the domestic workers can be removed if they can be recognized as 'workers' and brought under the law through the process of formalization.

The research methodology is primarily qualitative, using both primary and secondary information sources of the ILO, reports of Bangladesh Governments, books and articles. The research includes some information published in newspaper articles and blogs to explore the practise and attitudes towards domestic workers in Bangladeshi society. This thesis also includes the experiences of some neighbouring countries of Bangladesh which has either formalized the sector of Domestic work or started to move towards formalization of this sector with necessary arrangements and offers that similar measures can be taken to formalize the domestic workers in a country like Bangladesh also.

The research concludes with the finding on how formalization would be useful to protect the sector of domestic workers by adopting international labour standards for the domestic workers and alleviate many of the problems faced by these workers along with some recommendations that should be done in Bangladesh. To ensure safe and secured workplace for the domestic workers integral to promote decent work for them are the main concern of the thesis.

# Preface

This research work is intended to present a whole scenario of the working conditions of millions of domestic workers of Bangladesh and the necessity to bring these workers under a comprehensive legal framework. International Labour Organization (ILO) has adopted the Convention concerning decent work for domestic workers (C189 - Domestic Workers Convention, 2011) which came into force on 5th September, 2013. It is now high time for Bangladesh to take measures to ratify this convention and move towards the process of formalization of the sector of domestic work.

I would like to express sincere appreciation to Dr. Constance Thomas, my honorable supervisor for continually providing incisive feedback and valuable insight to work on my project. Her clear guidance enabled me to think deeply about every aspect of this topic and build the structure of my thesis. Whilst my supervisor has assisted me in many ways with her long term experiences as a professional of the ILO, any errors or omissions must of course lie entirely with the author.

I would also like extend my thanks to the Swedish Institute (SI) for awarding me Swedish Institute Study Scholarship and giving me the opportunity to pursue my Masters at Lund University, Sweden. My sincere thanks to the Department of Law of Lund University for always providing the support with the information that I needed to accomplish my thesis work smoothly.

I naturally extend my gratitude to the International Domestic Workers Federation (IDWFED) for proving me all the valuable information and also to those workers who informally shared their experiences with me for which I was highly encouraged to choose this topic.

# Abbreviations

ACI	Areas of Critical Importance
BILS	Bangladesh Institute of Labour Studies
BLRF	Bangladesh Labour Rights Forum
CEACR	Committee of Experts on the Application of Conventions and Recommendations
DWRN	Domestic Workers Rights Network
FFE	Food for Education
HCD	High Court Division
IDWFED	International Domestic Workers Federation
ILC	International Labour Conference
ILO	International Labour Organization
NDWWU	National Domestic Women Workers Union
NGOs	Non-Government Organizations
SNF	Sramik Nirapotta Forum
UNICEF	United Nations International Children's Emergency Fund

# Chapter 1

## Introduction

### 1.1 Background

This topic has been chosen due to the fact that innumerable domestic workers are engaged in almost every family at both rural and urban level in Bangladesh. This has been an ignored sector and there is no recent data available as to the accurate number of domestic workers in this country. Report of previous Labour Force Survey 2006 shows that the total number of domestic workers in that year was almost 3,31000. And the number of child domestic workers were 4,20000 according to the ILO-UNICEF Baseline survey of 2007.<sup>1</sup> Afterwards, the number of domestic workers has been increasing every year.

The Declaration of Fundamental Principles and Rights of the ILO applies to all workers including domestic workers.<sup>2</sup> Similarly, several other conventions relating to employment, working conditions and social security can be applied to all workers.<sup>3</sup> Due to the difficulty in regulating working conditions in the private houses, many States either expressly exclude domestic work from the ambit of labour legislation or make no provisions to address the specific needs of domestic workers and their employers.<sup>4</sup> As a result, In June 2011, the International Labour Conference of the International Labour Organization (ILO) adopted the Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation (No. 201).<sup>5</sup> This is the first time that the ILO has formulated international labour standards dedicated to this particular group of workers.

The exploitation and abuse that many domestic workers face stems from the non-recognition of this sector of domestic work as work, from the nature of the workplace and from the informality of the employment relationship.<sup>6</sup> In Bangladesh, these workers, make up a large part of the informal economy and therefore they are highly vulnerable to exploitations and

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<sup>1</sup> "Domestic Workers in Bangladesh" presented by Murshida Akter Nahar, Domestic Workers Rights Network, Bangladesh, Secretariat: Bangladesh Institute of Labour Studies (BILS)

<sup>2</sup> Asha D'Souza, Moving towards Decent work for Domestic workers: An Overview of the ILO's work, ILO, Working paper 2/2010

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Effective protection for domestic workers: a guide to designing labour laws / International Labour Office, Conditions of Work and Employment Programme, Industrial and Employment Relations Department – Geneva: ILO, 2012. ISBN 978-92-2-125275-7.

<sup>6</sup> Supra note 2

abuses due to the fact that these workers are not covered by the national labour laws. There is yet no specific national law or regulation in this country which has been implemented to protect them. Moreover, Bangladesh has not ratified the Domestic Workers Convention, 2011 (No. 189). Therefore, in Bangladesh, it is necessary to adopt this specific international convention solely created for them and to implement separate law to regulate their employment.

## **1.2 Purpose and Research Question**

Although, some research has been done on this sector by academicians and Non-Government Organizations (NGOs) focusing mainly on violations of rights of domestic and child domestic workers, this topic has rarely been a focus for systematic research from the perspective of legal scholars in Bangladesh. The purpose of research is mainly to bring this group of workers under the coverage of Law through the process of formalization in Bangladesh and to ensure decent work for domestic workers in Bangladeshi society.

Domestic workers are appointed to work at private households. Due to the specific features of this occupation this sector has been a part of informal economy in many countries of the worlds. These workers have been excluded from protection of the national labour legislations of many states. However, many states have already ratified the Domestic Workers' Convention of the ILO and started to move towards process of formalization of the sector of domestic work in their territories. Therefore, my main research question is "how formalization of the domestic workers can promote decent work for these workers through protection of labour and other human rights of these workers and thereby contribute to the development of Bangladesh."

## **1.3 Methodology and materials**

The thesis uses mainly a qualitative empirical approach through analysis of data and articles published mainly by the International Labour Organization (ILO) to obtain information that can provide a comprehensive picture on the issue. The research also includes some real life experiences of some domestic workers of Bangladesh published in newspaper articles and websites provided by the International Domestic Workers Federation (IDWFED) via electronic mail upon request to explore the practise and attitudes towards domestic workers in Bangladeshi society. Other materials such as books of different authors, reports and draft policies from the Ministry of Labour and Employment, Bangladesh, were also used and analysed in the thesis.

#### **1.4 Delimitations**

The scope of the thesis is limited to bringing the domestic workers under the coverage of law and thereby focuses mainly on labour and other human rights of domestic workers. Hence, the thesis does not emphasize much on the rights of the employers. As regard to the comparative research on other countries towards the process of formalization, the thesis is limited to some main actions and laws taken in those countries by reason of the language restrictions and is not intended to be fully comprehensive review.

#### **1.5 Structure of the thesis**

The thesis begins by focusing on current International law, policy and practice from the viewpoint of mainly the International Labour Organizations (ILO) concerning domestic workers. Then, it provides a glimpse of historical demand for recognizing and formalizing this sector to the most recent developments at International level.

The second part of the thesis contains an overall framework of Laws and policies of Bangladesh along with the current attitudes and practice towards domestic workers in Bangladeshi society. Further, the thesis includes some recent developments in the field of domestic work in a few neighbouring countries that can be taken as an example for moving towards formalization of this sector. Then it again focuses on the main reasons and necessities of formalization of domestic work in Bangladesh.

The remainder of this part of the thesis focuses on the recommendations pertaining to formalizing domestic work in Bangladeshi society. The regulation and formalization of the domestic workers is necessary to the development of Bangladesh. Protection of rights of the domestic workers by adopting international labour standards and comprehensive law at national level may remove many of the difficulties faced these workers and to promote decent work for them in Bangladesh is the main concern of this whole research.

## Chapter 2

### An overview of International Law on Domestic Workers

This chapter aims to provide a glimpse of international law that can cover the area of domestic work. Domestic work is one of most important sources of employment around the world. This group of workers usually work for long hours with poor remuneration, and have less social protection.<sup>7</sup> They are more vulnerable to abuse since their working conditions are regulated by their employers.<sup>8</sup> Most of them come from poor families or rural areas where limited access to education and skills development made them bound to choose this profession.<sup>9</sup> On the basis of national surveys in 117 countries, the International Labor Organization (ILO) estimates that the number of domestic workers is 52.6 million and there has been a growth of minimum 19 million since 1995.<sup>10</sup> It is necessary to define the term domestic worker in order to know their nature of work. The definition of “domestic worker” may vary under the legislation or policy of different countries.<sup>11</sup> Generally, domestic workers are workers employed by private households within national boundaries or overseas to do house chores and care work.<sup>12</sup> According to the ILO Convention no 189, “the term domestic work means work performed in or for a household or households and the term domestic worker means any person engaged in domestic work within an employment relationship”.<sup>13</sup>

It is a long-standing concern of the International Labor Organization to attain a better condition of work for the domestic workers.<sup>14</sup> This issue first received the attention in 1936, when the International Labor Conference adopted the Holidays with Pay Convention, 1936 (No.52), which established the right to six days of paid leave for workers in manufacturing and a range of other industries.<sup>15</sup> Domestic workers were excluded from the Convention and that urged the Conference to request that the issues of holidays with pay for domestic servants be put on the future agenda of the Conference and to consider simultaneously, whether other conditions of

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<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> ILO, *Domestic Workers across the World: Global and Regional Statistics and the Extent of Protection* (ILO 2013).

<sup>11</sup> *A Landscape Analysis of Domestic Workers’ Rights and ILO Convention 189*- Published by the Thomson Reuters Foundation for the Trust Women Conference, November, 2012.

<sup>12</sup> *Domestic Workers Count Too: Implementing Protections for Domestic Workers*”, by UN WOMEN and ITUC

<sup>13</sup> See Article 1 of The Domestic Workers Convention, 2011 (Convention No. 189)

<sup>14</sup> Supra note 10

<sup>15</sup> Ibid

domestic servants' employment could form the subject of international regulation.<sup>16</sup> At that time a delegate debated "domestic servants are wage-earners, and therefore entitled to protection in the same way as other wage-earners".<sup>17</sup> Then in early 1948, the ILO adopted a resolution in relation to the conditions of employment of domestic workers.<sup>18</sup> In 1965, it adopted a resolution calling for normative action in this sector.<sup>19</sup> This resolution described attention the urgent need to provide domestic workers with the basic elements of protection which would guarantee them a minimum standard of living, compatible with the self-respect and dignity essential to social justice.<sup>20</sup>

In this regard, the Conference invited the Governing Body:

- to promote studies and research on the problems of domestic workers, with particular attention to the problems of women workers;
- to study in the first instance the problems of such workers on the basis of material supplied by governments;
- to consider organizing a second meeting of experts to examine the possibility of drafting a model contract or a code of guiding principles for the protection of
- working and living conditions of domestic workers; and to consider, on the basis of the preceding actions, placing on the agenda of an early session of the Conference, the question of conditions of employment of domestic workers with a view to the adoption of an international instrument.<sup>21</sup>

Further, in 1970, the first survey was published on the status of domestic workers which caught the attention of the international arena.<sup>22</sup> However, ILO report shows that, many domestic workers were still excluded from provisions that covered other workers with respect to essential working conditions, such as paid annual leave, working time, minimum wage coverage and maternity protection.<sup>23</sup> The ILO has continually taken the view that, unless a Convention or Recommendation expressly excludes domestic workers, these workers cannot be excluded from the scope of the international instrument.<sup>24</sup> These instruments play a vital

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<sup>16</sup> See Resolution concerning Holidays with Pay for Domestic Servants, submitted by the Committee on Holidays with Pay, adopted by the International Labour Conference, 20th Session (Geneva, 4–24 June 1936)

<sup>17</sup> International Labour Conference, 20th Session (Geneva, 1936), Records of Proceedings, p. 465

<sup>18</sup> ILO: Record of Proceedings, International Labour Conference (ILC), 31st Session, 1948, Appendix XVIII: Resolutions adopted by the Conference, pp. 545–546

<sup>19</sup> ILO: Official Bulletin (Geneva), July 1965, Supplement I, pp. 20–21

<sup>20</sup> Supra note 2

<sup>21</sup> Ibid

<sup>22</sup> ILO: "The employment and conditions of domestic workers in private households: An ILO survey", in *International Labour Review*, Oct. 1970, pp. 391–401

<sup>23</sup> Supra 2

<sup>24</sup> Office of the Legal Adviser, Legal Opinion of 29 July 2002.

role in designing labour law which can cover domestic workers. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO has stated that the fundamental principles and rights at work are to be respected in relation to the working conditions of domestic workers.<sup>25</sup> Article 2 of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), applies to all workers and employers without any distinction.<sup>26</sup> The CEACR has also stated that the fundamental principles of non-discrimination and equality of opportunity reflected in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100), also apply to domestic workers.<sup>27</sup> To combat child domestic labour, the CEACR has paid attention to the in the Worst Forms of Child Labour Convention, 1999 (No. 182) together with the ILO's Conventions on forced labour and minimum age.<sup>28</sup> The CEACR emphasized in the general survey of 2007 on the eradication of forced labour that the prohibition of the use of forced or compulsory labour was a peremptory norm of modern international human rights law.<sup>29</sup> Therefore, Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105), which require that all human beings are free from forced labour in law and in practice, will also apply to all workers, including domestic workers.<sup>30</sup>

The ILO is to fulfil its mandate of promoting decent work for all for which setting of standards is to be taken into consideration for this sector as well.<sup>31</sup> In 2010, it has finally embraced this challenge through two years of negotiations on the world's first international convention to assure "Decent Work for Domestic Workers."<sup>32</sup> In June 2011, The International Labour Conference adopted the Convention concerning decent work for domestic workers along with a Recommendation supplementing it, which is known as the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011.<sup>33</sup> These are two instruments that cover detailed standards and minimum protection for domestic workers.<sup>34</sup>

In regulating the sector of domestic work, the Convention has taken a human rights approach for domestic workers.<sup>35</sup> In its Preamble it makes reference to several international

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<sup>25</sup> International Labour Conference, 99th Session, 2010, Decent work for domestic workers, Fourth item on the Agenda, Report-IV (1), p11

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Supra 20

<sup>32</sup> Jennifer N. Fish, Making History through Policy: A Field Report on the International Domestic Workers Movement, International Labour and Working-Class History, Inc., 2015 doi:10.1017/S0147547915000253

<sup>33</sup> Supra 5

<sup>34</sup> Ibid

<sup>35</sup> Einat Albin and Virginia Mantouvalou: The ILO Convention on Domestic Workers: From the Shadows to the

human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>36</sup> Article 3(1) states that Member States ‘shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention’ and Article 3(2) emphasizes the importance of freedom of association, the elimination of forced labour, the abolition of child labour, and the elimination of discrimination.<sup>37</sup> It also put emphasis on right to private life of domestic workers under Article 6 and the protection from all forms of violence and abuse in the privacy of the employers’ household under Article 5.<sup>38</sup> These provisions reflect the special challenges of the public/private divide that characterize the domestic labour relation.<sup>39</sup> The Domestic Workers’ Convention includes both civil rights, like access to justice and privacy, and social and labour rights, such as working time and minimum wage, taking an integrated approach towards human rights law which has been usually recognized through the work of the ILO.<sup>40</sup> In principle, the Convention provides that people who work in domestic households must have the same basic labour rights as other workers.<sup>41</sup> These rights include,

- Reasonable working hours;
- Weekly rest of at least 24 consecutive hours;
- Limits on in-kind payment;
- Clear information on terms and conditions of employment; and
- Respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining.<sup>42</sup>

The international legal framework has been designed in a way to protect the rights of domestic workers effectively. The new international Convention of the ILO concerning Domestic workers and the Recommendation No. 201 aim at the protection of workers performing domestic work within an employment relationship and set the standard that all countries should aim to achieve, including Bangladesh.

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Light-UCL Labour Rights Institute On-Line Working Papers –LRI WP 1/2011

<sup>36</sup> Preamble of the Convention concerning decent work for domestic workers (Domestic Workers Convention, 2011)

<sup>37</sup> The Domestic Workers Convention, 2011

<sup>38</sup> Ibid

<sup>39</sup> Supra note 33

<sup>40</sup> Ibid

<sup>41</sup> Supra note 9

<sup>42</sup> Ibid

## Chapter 3

### Growing demand of formalizing the sector of domestic work:

This chapter focuses on the demand of formalizing the sector of domestic workers along with the meaning of both ‘informal economy’ and ‘process of formalization’. It was more than 40 years ago that the ILO first used the term “informal sector” to describe the activities of the poor working group who used to work very hard but who were not recognized, recorded, protected or regulated by the public authorities.<sup>43</sup> Then in 1991, it was the 78th Session of the International Labour Conference where the issue of “dilemma of the informal sector” was discussed.<sup>44</sup> This report highlighted that “there can be no question of the ILO helping to ‘promote’ or ‘develop’ an informal sector as a convenient, low-cost way of creating employment unless there is at the same time an equal determination to eliminate progressively the worst aspects of exploitation and inhuman working conditions in the sector”.<sup>45</sup> Most people choose to go into the informal economy when they are unable find jobs or to start businesses in the formal economy.<sup>46</sup> Works carried out by the workers in the informal economy cannot be termed “decent” compared to recognized, protected, secure, formal employment.<sup>47</sup> ‘Home workers’ or ‘domestic workers’ are the result of this non-standard and flexible wage employment.<sup>48</sup> In 2013, the Governing Body of ILO categorized one of the eight areas of critical importance (ACIs) towards the formalization of the informal economy, which was included in the Programme and Budget for 2014–15 for setting standards to place the informal economy to a formal one on the agenda of the International Labour Conference (ILC) for a double discussion in 2014 and 2015.<sup>49</sup>

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<sup>43</sup> ILO: Employment, incomes and equality: A strategy for increasing productive employment in Kenya (Geneva, 1972).

<sup>44</sup> ILO: The dilemma of the informal sector, Report of the Director-General, International Labour Conference, 78th Session, Geneva, 1991.

<sup>45</sup> Ibid

<sup>46</sup> International Labour Conference, 90th Session 2002: Decent work and the informal economy, Report VI, Sixth item on the agenda

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> ILO: Formalization of the informal economy: Area of critical importance, 325th Session, Geneva, 29 October–12 November 2015

Then in June 2015, ILC adopted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which is the first document to deliver comprehensive guidance to help workers and economic units move out of the informal economy and into the formal economy.<sup>50</sup> However, domestic work was one of the areas of critical importance among those sectors brought up by the governing body.<sup>51</sup> Raising awareness of the Domestic Workers Convention, 2011 (No. 189) along with the Domestic Workers Recommendation, 2011 (No. 201), supporting the establishment or strengthening of laws and tripartite structures and strengthening the capacities of the social partners to organize domestic workers and their employers were specially focused by the ILC.<sup>52</sup>

### **3.1 Informal Economy:**

Before understanding the term ‘formalization’, it would be reasonable to clarify the meaning of informal economy. The working groups who have been termed “informal” is due to most common feature they have: they are not recognized or protected under the legal and regulatory frameworks.<sup>53</sup> These workers are therefore vulnerable to different types of problems.<sup>54</sup> Since, they are not recognized under the law, therefore they receive little or no legal or social protection and cannot really to enforce contracts.<sup>55</sup> There may also happen that they get appointed without any formal or oral contract. These workers have no effective representation for them and they are often excluded from enjoying access to public infrastructure and benefits.<sup>56</sup> According to the ILO also, the most appropriate way of viewing the situation of the informal economy is in terms of decent work deficits.<sup>57</sup> For example, poor-quality, unproductive and unremunerated jobs that are not recognized or protected by law, the absence of rights at work, inadequate social protection, and the lack of representation and voice are most noticeable in the informal economy.<sup>58</sup>

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<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Supra note 43

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Ibid

According to the 17th International Conference of Labour Statisticians (ICLS), “employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to labour legislation, income taxation, social protection or entitlement to certain employment benefits (e.g. advance notice of dismissal, severances of pay, paid annual or sick leave, among others).”<sup>59</sup>

Informal economy is a prominent feature of the economy of Bangladesh. In the official labour force statistics of Bangladesh, this sector along with the employment statistic data have not been collected on a regular basis.<sup>60</sup> There is almost no full-fledged law to implement the rights of the informal workers and yet they make up almost 88 percent of the total workers.<sup>61</sup> And domestic workers are also one of these group of informal workers.<sup>62</sup> Therefore, if this group can be brought under the coverage of law, it may largely contribute to the development process of Bangladesh.

The connection between law, regulations and their influence on informality is a main policy issue.<sup>63</sup> In the 2002 International Labour Conference, the very characterization of the informal economy discussion was directed in terms of the relationship to law.<sup>64</sup> More specifically it meant that all activities in this sector have been out of the reach of law. As highlighted in the conclusions adopted at the International Labour Conference in 2002, informality is also an issue of governance.<sup>65</sup> The growth of the informal economy can often be drawn from inappropriate, ineffective social policies, often arises without tripartite consultation; the lack of favourable legal and institutional frameworks and the lack of good governance for proper and effective implementation of policies and laws.<sup>66</sup>

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<sup>59</sup> The Informal Sector and Informal Employment in Bangladesh, Bangladesh Bureau of statistic, Country Report,2010

<sup>60</sup> Ibid

<sup>61</sup> Bangladesh Occupational Safety, Health and Environment Foundation (OSHE) Newsletter, Issue no 03, May-June, 2015

<sup>62</sup> Ibid

<sup>63</sup> Decent work and the transition to formalization: recent trends, policy debates and good practices International Labour Office. - Geneva: ILO, 2008

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Ibid

### **3.2 Meaning of formalization:**

There exists a huge debate as regard to the meaning of formalization. According to Chen, Domestic work does not fit neatly under any of existing and dominant theories of informality under economics.<sup>67</sup> Rather, formalization of domestic work should include the following elements:<sup>68</sup>

1. regulation and taxation;
2. legal recognition and protection as workers; and
3. rights and benefits of being formally employed:
  - a) freedom from discrimination;
  - b) minimum wage;
  - c) occupational health and safety measures;
  - d) employer contributions to health and pensions;
  - e) right to organize and bargain collectively;
  - f) membership in formal trade unions; and
  - g) access to formal system of social security.

Chen further suggests that formalization should be seen as a gradual ongoing process involving incremental steps and different dimensions leading towards varying degrees and types of formality and it should be recognized that formalization will not proceed quickly or automatically for all those who choose to formalize.<sup>69</sup> Promoting formalization requires policies that address the specific needs and circumstances of the various groups of workers and economic units in the informal economy and also policies that tackle the structural causes of informality of that sector.<sup>70</sup>

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<sup>67</sup> Martha Alter Chen: Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges

<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Supra note 46

The work of office under ACI 6 was therefore structured in towards Underpinning the strategy of promoting organization of workers and employers in the informal economy, both as a fundamental right in itself and as a stepping stone to the realization of other fundamental rights at work and the other dimensions of decent work.<sup>71</sup> Therefore, formalization requires interventions in the policy for the targeted areas that includes adapting diverse strategies according to national circumstances.<sup>72</sup> In the context of the global decent work deficits of the ILO, breaking out of informality is increasingly viewed as the principal development challenge across the world which is important to realizing decent work as a global goal for all workers for promoting a fair globalization.<sup>73</sup> It is against this background that the informal economy debate and possible strategies towards formalization are gaining new momentum at all levels and in various circles.<sup>74</sup>

From a decent work perspective, transition to formality according to ILO is cast within each of the four pillars of: (1) rights at work; (2) employment promotion; (3) social protection; and (4) social dialogue.<sup>75</sup> Though, its fundamental value is essentially in the integration and the interaction amongst the policy actions covered under each theme.<sup>76</sup> However, ILO already adopted the Domestic Workers Convention in 2011 and its Recommendation (No. 201). In Present day, for a member state, the ratification of this convention can also be termed as a process towards formalization of domestic workers. While many of the existing international labour standards permit for the exclusion of domestic workers in their application, the Domestic Workers Convention, 2011 (No. 189), seeks to bring domestic workers under the umbrella of labour law.<sup>77</sup> Extending the reach of labour law is a means of bringing domestic workers within the formal economy and into the mainstream of the Decent Work Agenda.<sup>78</sup> As stated in the 2002 Resolution concerning decent work and the informal economy, “the challenge of reducing decent work deficits is greatest where work is performed outside the scope or application of the legal and institutional frameworks”.<sup>79</sup>

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<sup>71</sup> Ibid

<sup>72</sup> Ibid

<sup>73</sup> The ILO- The informal economy: enabling transition to formalization, ISBN 978-92-2-120534-0

<sup>74</sup> Ibid

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Supra note 10

<sup>78</sup> Ibid

<sup>79</sup> International Labour Conference, 2002, para. 2

In Bangladesh, there are more than 2 millions of workers currently engaged in household works. These workers are employed at private households to carry out household chores and care work. They contribute by way of their labour and skills to support employer households. These workers help to free up time for men and women employers to engage in “productive” activity or “leisure” and enhance their economic and social wellbeing.<sup>80</sup> Therefore, the Government may also benefit from its savings if family care can be provided more effectively by the domestic workers.<sup>81</sup> If these workers can be brought under the formal economy through achieving international standards, it may ultimately play a vital role in the development process of Bangladesh.

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<sup>80</sup> Supra 12, page 51

<sup>81</sup> Ibid

## Chapter 4

### National Law framework of Bangladesh:

This chapter aims to give a brief overview of the existing laws and policies that covers the domestic workers and discuss whether or not these laws and policies are sufficient to give protection to the domestic workers in Bangladesh. Further, this chapter highlights the present practice and attitudes in Bangladeshi society towards these workers.

#### **4.1 Legislation covering Domestic Workers:**

Domestic workers have been one of the least protected groups of workers under national labour legislation.<sup>82</sup> The ILO prepared the law and practice report on domestic work for the 99th Session of the International Labour Conference in June 2010 where the reports collected from member States showed that the labour legislation of a significant number of countries wholly or partially excludes domestic workers from its coverage, or that national laws regulating domestic work provide for lower levels of protections than those available to other workers.<sup>83</sup>

Bangladesh has been a part of number of significant conventions of ILO, such as, conventions relating to Freedom of association, collective bargaining and industrial relations, Elimination of forced labour, Elimination of child labour, protection of children and young persons and Equality of opportunity and treatment etc.<sup>84</sup> However, Bangladesh Labour Legislation expressly excludes domestic workers from its ambit. Section 1 (4) (o) expressly says that the law shall not be applicable to domestic workers.<sup>85</sup> Since, the national labour legislation does not cover the domestic workers, therefore, they cannot enjoy their labour or human rights which they are entitled to. There is no scope for them to resort to the labour court as well. Bangladesh has not ratified The Domestic Workers Convention, 2011 (No. 189).<sup>86</sup> There is a 'Domestic Servants' Registration Ordinance 1961' in which the term 'domestic worker' under the laws of Bangladesh has been defined. It says that "the term '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>87</sup> The 1961 ordinance requires self-

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<sup>82</sup> Supra note 10

<sup>83</sup> For a comprehensive historical overview of the United States, see Morgan (2008).

<sup>84</sup> NATLEX database

<sup>85</sup> Bangladesh Labour Act, 2006, Section 1(4)(O)

<sup>86</sup> NORMLEX Information System on International Labour Standards

<sup>87</sup> Ordinance No. XLIV of 1961, Section 2(a)

registration of domestic workers with local police stations in Dhaka.<sup>88</sup> But this law is not reportedly followed by anyone in terms of registration. It also fails to propose any legal redress against abuse and harsh work conditions.<sup>89</sup>

The existing code of criminal procedures, the Women and Children Repression Prevention (Amendment) Act 2003 and National Child Labour Elimination Policy 2010, may also cover to protect the rights of women and children, including the domestic workers.<sup>90</sup> In addition, the Government of Bangladesh approved a new National Plan of Action from 2012 to 2014 to combat human trafficking.<sup>91</sup> The Parliament has approved the Human Trafficking Deterrence & Suppression Act of 2012 which attempts to address all forms of trafficking (sexual exploitation, child labor, bonded labor, organ trade etc.).<sup>92</sup>

Though, these instruments can be applied in cases concerning domestic workers, but these laws offer protection to the domestic workers as citizens of Bangladesh not as workers. Therefore, these are not sufficient to bring them under the formal economy as workers.

In 2014, the High Court division of the Supreme Court of Bangladesh questioned the Government authorities in a writ petition to explain as to why they should not be directed to make a law to protect the rights of domestic workers.<sup>93</sup> The High Court Division required the government to explain in four weeks.<sup>94</sup> The court issued the rule after Human Rights and Peace for Bangladesh filed a writ petition on June 12, 2014 saying domestic workers are deprived of their fundamental rights even after they work 15 to 16 hours a day as they are not considered labourers under the existing laws.<sup>95</sup> In the rule, the HCD also asked the government to show cause as to why its inaction to execute policies regarding the security and rights of domestic workers should not be declared illegal.<sup>96</sup> Secretaries to the cabinet division, the Prime Minister's Office, and ministries of law, labour and child affair have been made respondents.<sup>97</sup> During the hearing of the case, petitioner's counsel Manzill Murshid told

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<sup>88</sup> Ibid

<sup>89</sup> ASM Ali Ashraf, Domestic Workers need the Law in their side, Dhaka Tribune, August 2, 2015

<sup>90</sup> Ibid

<sup>91</sup> Universal Periodic Review (UPR) to The United Nations Human Rights Council, A Joint Submission by Bangladesh National Woman Lawyers Association & 100 members in Coalition focusing on the woman and child rights issues Bangladesh-October 2012

<sup>92</sup> Ibid

<sup>93</sup> Newage the outspoken daily, Why no Domestic Workers' protection law: HC July 2, 2014

<sup>94</sup> International Domestic Workers' Federation (IDWFED): Bangladesh: High Court asks govt why not make law for protection on rights of domestic workers published on Jul 02, 2014

<sup>95</sup> Ibid

<sup>96</sup> Ibid

<sup>97</sup> Ibid

the court that there are millions of domestic workers in the country, but their fundamental and human rights are not protected since they are not considered labourers in the existing laws.<sup>98</sup>

Deputy Attorney General Mokhlesur Rahman represented the government.<sup>99</sup> The court also asked the authorities to explain their failure to enact a law to protect domestic workers to implement the objects of the Bangladesh Labour Act 2006, the draft Domestic Workers Protection and Welfare Policy 2010 and the Children Policy 2011.<sup>100</sup> The lawyer argued that the Labour Act of Bangladesh have not defined domestic workers as labours and in absence of a law they were facing discrimination, harassment and torture including physical torture, trafficking and even death.<sup>101</sup>

Afterwards, Bangladesh Government further approved the draft of "Domestic Worker Protection and Welfare Policy-2015."<sup>102</sup> These policy contains some important provisions for both domestic workers and their employers. In its preamble, it states about one of its object to recognize the domestic work as 'work'.<sup>103</sup> The policy provides that to appoint the children who are below the age of 18 but have attained 14 and children below the age of 12 for carrying out light works, the permission of the lawful guardian must be obtained.<sup>104</sup> All domestic workers must entitle to a healthy and safe space for sleeping while they are off duty.<sup>105</sup> Female domestic workers will get 4 months of maternity leave.<sup>106</sup> During the time of sickness, the domestic worker must be abstained from workload.<sup>107</sup> Moreover, they must be provided scope for prayers according to their religion.<sup>108</sup> The policy also contains provisions for compensation for any accident occurred during the time of rendering service.<sup>109</sup> Even though, the policy has provided some benefits to the domestic workers, but it is yet not in conformity with the international standards provided by the Domestic Workers Convention in many aspects. Moreover, the policy is vague in respect of working hours, rest, entertainment and regarding compensation provided for any accident that occurs at work place.<sup>110</sup> Also it does not speak about formation of trade unions to represent domestic workers. For this, more dedication and efforts are required to provide better protection to these workers. However, this policy has not

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<sup>98</sup> Ibid

<sup>99</sup> Ibid

<sup>100</sup> Supra 89

<sup>101</sup> Ibid

<sup>102</sup> Annual Report, 2014-2015, Ministry of Labour and Employment, Bangladesh.

<sup>103</sup> See Preamble of the Domestic Worker Protection and Welfare Policy-2015

<sup>104</sup> The Domestic Worker Protection and Welfare Policy-2015, Section: 7 (3)

<sup>105</sup> Ibid, Section 7(4)

<sup>106</sup> Ibid, Section 7(5)

<sup>107</sup> Ibid, Section 7(7)

<sup>108</sup> Ibid, Section 7(8)

<sup>109</sup> Ibid, Section 7(9)

<sup>110</sup> Ibid, Section 7(4) & 7(9)

yet been implemented by the government. In Bangladesh, Minister of Civil Aviation and Tourism, Rashed Khan Menon, is a who is also the Chairman of the Workers Party of Bangladesh, proposed to include domestic workers in the Labour Law during the Labour Law amendment in 2013.<sup>111</sup> In 2015, he participated the May Day Rally as the chief guest on May Day in front of National Press Club, Dhaka, Bangladesh where he stated about the final draft of the Protection and Welfare Policy for Domestic Workers and recognition of domestic workers as 'workers' in the labour law.<sup>112</sup> Also in 2016, The Domestic Workers Rights Network (DWRN) Bangladesh organized a Gathering Rally of domestic workers on May Day where Member of Parliament and Member of Standing Committee of the Ministry of Labour, Israfil Alam and Employment and the Chairman of Bangladesh Institute of Labour Studies (BILS) Habibur Rahman Shiraj expressed solidarity with the demand to ensure implementation of newly passed 'Domestic Workers Protection and Welfare Policy 2015' to protect the rights of domestic workers.<sup>113</sup>

Domestic Workers' Rights Network (DWRN) also organized the event at the office of Bangladesh Institute of Labour Studies (BILS) in the Dhaka city to review the draft of Domestic Workers Protection and Welfare Policy, 2015 prior to its approval.<sup>114</sup> Labour and employment secretary Mikail Shipar was present at the programme as the chief guest. He termed the policy to be primary step for formulation of a full law for domestic workers.

#### **4.2 Legislation covering Child Domestic Workers:**

Child labour is defined as work that deprives children of their childhood, their potential and dignity and that is harmful to physical and mental development.<sup>115</sup> The ILO asserts that the term child labour refers to work that is "mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to

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<sup>111</sup> International Domestic Workers' Federation: Bangladesh: "the government has initiative to bring domestic workers under labour code, Minister Menon said". Sources available at: <http://www.idwfed.org/en/updates/bangladesh-the-government-has-initiative-to-bring-domestic-workers-under-labour-code-minister-menon-said>

<sup>112</sup> Ibid

<sup>113</sup> International Domestic Workers' Federation: Bangladesh: DWRN organised a Gathering and Rally of domestic workers on May Day, published May 01, 2016, Nazrul Islam

<sup>114</sup> International Domestic Workers' Federation: Bangladesh: DWRN urging the government to ensure the rights of two million domestic workers, published Oct 23, 2015

<sup>115</sup> See BANGLADESH BUREAU OF STATISTICS, PLANNING DIVISION, GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH, BASELINE SURVEY FOR DETERMINING HAZARDOUS CHILD LABOUR SECTORS IN BANGLADESH 2005, 19 (2006), Parishankhyan Bhaban, Dhaka. Published by Momin Offset Press, Dhaka.

combine school attendance with excessively long and heavy work”.<sup>116</sup> International Treaties assert that “domestic work undertaken by children under the legal minimum working age, as well as by children above the legal minimum age but under the age of eighteen, under slavery-like, hazardous, or other exploitative conditions - a form of child labour to be eliminated”.<sup>117</sup>

Article 20 of the Constitution refers to work as a right and a duty and a matter of honour of every citizen who is capable of working.<sup>118</sup> Article 28 of the Constitution empowers the State to make special provisions for the benefit of children.<sup>119</sup> The Ministry of Labour and Employment of Bangladesh has reviewed all fragmented laws related to child labour with a view to fixing a uniform age for admission to work and to prohibit their engagement in hazardous occupations.<sup>120</sup> Regrettably, Child Domestic Work is not included in the list of hazardous occupations for children by Bangladesh Government that is not according to the standard of the ILO.<sup>121</sup> According to the Labour Act (2006) the minimum age for admission to work is 14 years and 18 years for hazardous work.<sup>122</sup> Further, light work for children between the ages of 12 - 14 years is defined as non-hazardous work that does not impede education.<sup>123</sup> However, this minimum age requirement is not followed in case of appointment of child domestic workers at private houses as the national labour legislation is not applicable for domestic workers.

Other laws that define the rights and protections of children are:<sup>124</sup>

- The Children Act (1974) and the Children Rules (1976);
- The Bonded Labour Act, 2006;
- The Suppression of Violence against Women and Children Act (2000); and
- The Compulsory Primary Education Act, 1990.

Research studies showed that there was awareness as regard to child labour in the 1990s within the Government and civil society and several initiatives were taken by the Government of Bangladesh to combat the problem.<sup>125</sup>

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<sup>116</sup> See About Child Labour, INTERNATIONAL LABOUR ORGANIZATION, <http://www.ilo.org/ipec/facts/lang--en>

<sup>117</sup> Bangladesh Shishu Adhikar Forum (BSAF): A Desk Review Child Labour in Domestic Work in Bangladesh, December, 2013, page-3

<sup>118</sup> The Constitution of People’s Republic of Bangladesh, Article 20

<sup>119</sup> Ibid, Article 28

<sup>120</sup> ILO, Child Labour and Responses in South Asia: Bangladesh

< <https://www.ilo.org/legacy/english/regions/asro/newdelhi/ipec/responses/bangladesh/national.htm>>

<sup>121</sup> Bangladesh Shishu Adhikar Forum (BSAF): A Desk Review Child Labour in Domestic Work in Bangladesh, December, 2013, page-3

<sup>122</sup> The Bangladesh Labour Act (2006), Section 44

<sup>123</sup> Ibid

<sup>124</sup> ILO, Child Labour and Responses in South Asia: Bangladesh

< <https://www.ilo.org/legacy/english/regions/asro/newdelhi/ipec/responses/bangladesh/national.htm>>

<sup>125</sup> Ibid

In 1990, Bangladesh became a signatory to the UN Convention on the Rights of the Child and the ensuing Summit Declaration and Plan of Action.<sup>126</sup> In the same year, Bangladesh enacted the Primary Education Act and, in 1993, it established the compulsory primary education system for children aged 6 years and above.<sup>127</sup> At the same time, the Government adopted the National Children Policy and formulated the first National Plan of Action for Children (1991 - 96).<sup>128</sup> The child labour problem was first identified in the second National Plan of Action for Children (1997 - 2002).<sup>129</sup>

In collaboration with the World Food Programme (WFP), the Government introduced the Food for Education Programme (FFE) in 1993 with the aim to motivate the poor children and their families to primary education.<sup>130</sup> In 1996, the Government introduced another initiative to tackle the high dropout and low attendance rates in the formal school system.<sup>131</sup> In March 2001, the Government ratified the Worst Forms of Child Labour Convention of the ILO and following that the Ministry of Labour and Employment initiated the development of National Policy on Child Labour in that year.<sup>132</sup> The Third National Plan of Action for Children (2004 - 09) emphasized the issue of the worst forms of child labour and provided information on planned interventions for the next five-year period.<sup>133</sup> The Ministry of Labour and Employment has also implemented a project funded by the United States Agency for International Development (USAID) aimed at the Eradication of Hazardous Labour in Bangladesh.<sup>134</sup> Interventions under this project, which covers cities in Dhaka and Chittagong Municipal Corporations, included non-formal education and skills training for working children and micro-credit support to their guardians/parents.<sup>135</sup>

The law does not provide a strong enforcement mechanism for the child labour provisions.<sup>136</sup> Additionally, the vast majority of children still work in the informal sector and engaged with worst form of Child Labour.<sup>137</sup>

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<sup>126</sup> Ibid

<sup>127</sup> Ibid

<sup>128</sup> Ibid

<sup>129</sup> Ibid

<sup>130</sup> Ibid

<sup>131</sup> Ibid

<sup>132</sup> Ibid

<sup>133</sup> Ibid

<sup>134</sup> Ibid

<sup>135</sup> Ibid

<sup>136</sup> <[http://www.unicef.org/bangladesh/Child\\_labour.pdf](http://www.unicef.org/bangladesh/Child_labour.pdf)>

<sup>137</sup> Concluding observations of the Committee on the Rights of the Child: Bangladesh, June 2009

The Ministry of Labour and Employment adopted a National Child Labour Elimination Policy 2010, which provides a framework to eradicate all forms of child labour by 2015.<sup>138</sup> Its aims include:<sup>139</sup>

- Withdrawing children from hazardous jobs;
- improving income generating opportunities for parents so they are not so reliant on child income;
- offering incentives for working children to attend school;
- enacting laws and improving law enforcement to eliminate child labour.

A Child Labour Unit has been established under this policy, which will have collect and disseminate data relating to child labour.<sup>140</sup> According to this policy, the criteria for defining hazardous work for children includes: working more than five hours a day; work that creates undue pressure on physical and psychological wellbeing and development; work without pay; work where the child becomes the victim of torture or exploitation or has no opportunity for leisure.<sup>141</sup> However, all these forms of works take place at domestic houses whether these are carried by an adult or a child. Also, the Bangladesh constitution has specific provision under Article 34 that declares all forms of forced labour are prohibited and punishable under law mentioning the article as “prohibition of slavery”. Unfortunately, at domestic houses, number of adult and child workers are still treated as slaves who live far away from decent working condition.

As a least developed country, it is more beneficial for this country to set policies in accordance with international standard followed by ratification of international conventions. In Bangladesh, it is visible that previous ratifications of International conventions played major role in minimizing problems related to child labour specially in the industrial sector that is mostly a part of formal economy. Yet, child domestic workers are still engaged with heavy works at private houses. But the condition is not as severe as it was before ratification of ILO conventions. Therefore, ratification of the Domestic Workers Convention may contribute more in eliminating child labour from private houses and provide a better future for the children.

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<sup>138</sup> <[http://www.unicef.org/bangladesh/Child\\_labour.pdf](http://www.unicef.org/bangladesh/Child_labour.pdf)>

<sup>139</sup> National Child Labour Elimination Policy 2010

<sup>140</sup> Ibid

<sup>141</sup> Ibid

### **4.3 Practise and attitudes towards domestic workers in the perspective of Bangladesh:**

In practice, domestic work is often detrimental to the development of the child since they are usually isolated from their families, deprived of access to education, burdened with household tasks far beyond their physical capacity, required to work extremely long hours for little or no remuneration. Moreover, they are often subjected to harsh punishment and physical, emotional and even sexual abuse.<sup>142</sup> In Bangladesh, often poor families send their children as domestic workers to some families in the neighbourhood as it is the easiest job that can be arranged within short period of time and a good source of income for them. Therefore, these workers cannot manage time to go to the schools for education. Due to the informal nature of the job, they have to work under poor working conditions. It also happens that children or adolescent are taken away from the poor families by middle men without the consent of their guardian to work as domestic worker. Hence, these workers are more vulnerable to various forms of violence such as sexual assault, rape and even more. Sometimes they are forced her to prostitution where the employer gains illegal profit from that activity. Becoming victim of harsh words, insult and depreciation by the lady employers are very common in Bangladesh. Sometimes, following the parents' approval, the employers often beat them up thinking it their duty as a guardian. Therefore, most of the workers have the tendency to switch to Garments factories as they do not wish to continue to work as domestic workers. But due to lack of skills and training, most of them are not able to get a similar job in another family who may usually provide better working conditions for them or to Garments industries. The living condition for live-in domestic workers are also frustrating in most of the families. Most of the times, these workers need to sleep on the floor of the kitchen and sometimes with their co-worker sleep on a very congested area where they cannot even move while sleeping. Even if they wake up at 6 o'clock in the morning and works till 11 o'clock at night, they are often deprived of casual or sick leaves and hardly gets any time for rest. Further, during the yearly festivals, these workers often stay at their workplace and cannot enjoy any vacation with their family.

A story of a girl of 16 years of age has been included which was collected from Mr. GMB Akash, a renowned Photo Journalist and Managing Director of First Light Institute of Photography, Dhaka, Bangladesh with his permission that gives us a common idea about the hardships faced by the workers of domestic households.

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<sup>142</sup> Supra 2 page 34.

'I worked in a big mansion. It was like a palace. Three years ago, one of my village aunts brought me in that mansion. I was a housemaid. I was astonished to see those big rooms, big furniture and big figures. Madam had only one daughter; I heard that apa (daughter of her owner) never became second in life. She was twice my age but I had to carry all her stuff; I had to clean her chipped nail polish, sometimes massage her legs. When they went to restaurant I had to look after their shopping bags. They never gave me anything to eat outside. I only took smell of good foods that I never could have. In marriage parties, I had to carry their extra accessories, big cameras and makeup boxes. In wedding, I had to wait to seat in the last batch and before I finish eating they often picked me up. I did not mind. After all I was a housemaid. In three years they did not increase 100 takas (\$1.25) in my salary. But I had to clean, cook and carry. That time, my mother was very sick, she called madam many times. I needed one month' advance salary to send it to her. I went to Madam's daughter, begged for money, begged for her sympathy. She refused with sigh. I cried a lot. At evening. I was brushing Apa's hair, she was showing me a new lipstick that she bought that day. She told me it was a lipstick called Mac which price is same as my salary. When she went to bathroom I opened the lipstick and put it all over my face, I crushed it with finger and rubbed it into the mirror. I did not know what happened to me, I ran away instantly, leaving everything behind. All the time a voice was inside my head, 'That lipstick and my salary are equal!'.<sup>143</sup> This story can show to some extent the poor living and working conditions of the domestic workers in Bangladesh even if they get appointed at a wealthy family. Her story touched the hearts of thousands people and it was shared by more than 2000 people at the fan page of Mr. Akash in Social Media.

In the year 2013, the Domestic Workers Rights Network (DWRN) organized a human chain in Dhaka to demand for justice of three domestic workers who were found dead on May 2 and 8, 2013.<sup>144</sup> The three domestic workers were very young. They were Sheuli (17 years old), Jerin (15 years old) and Tammanna (16 years old). Sheuli and Jerin were found dead near Uttara residential area sector of Dhaka city.<sup>145</sup> Tamanna was found dead in a house near old town of Dhaka. Together with leaders of trade union centres, human rights groups, labour and women groups, numbers of domestic workers joined the action.<sup>146</sup> They were united in DWRN

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<sup>143</sup> Information taken from GMB Akash, Managing Director, Managing Director of First Light Institute of Photography, Dhaka, Bangladesh.

Source Available at

<https://www.facebook.com/gmbakash/photos/a.262454117152683.63612.260876280643800/1080650848666335/?type=3&theater>

<sup>144</sup> International Domestic Workers' Federation (IDWFED): Bangladesh: "Demand justice for killed domestic Workers", published May 11, 2013, Source available at: <http://www.idwfed.org/en/updates/bangladesh-demand-justice-for-killed-domestic-workers>

<sup>145</sup> Ibid

<sup>146</sup> Ibid

as a national platform to press the government to formulate laws and approve policy for protecting the rights of domestic workers.<sup>147</sup>

Another incident was reported by the Financial Times in 2013. Rapid Action Battalion (RAB) team rescued female domestic help, Sathi (8), who was injured by her employer in his house. According to a newspaper report, the team arrested both the owner of the house and his wife. Sathi was produced before a press conference at the elite force headquarters in Uttara soon after her rescue. There were marks of burn injuries in her body, marks of beatings in legs, hands and shoulders. When asked, Sathi said her parents left her in her employer's house.<sup>148</sup>

Again in 2015, August 22, Domestic Workers Rights Network (DWRN) and Sramik Nirapotta Forum (SNF) Bangladesh organized another Human Chain at National Press club premises to protest torture on a child domestic worker by the mother in law of a Judicial Magistrate. The 10-year old domestic worker who was rescued from the residence of a magistrate gave a statement of tortures on her which was recorded by Judicial Magistrate of Satkhira. Victim's father met her daughter at Satkhira Sadar Hospital on getting information about that incident. Meanwhile, he demanded punishment of the accused who tortured her daughter. Following the incident, acting deputy director of Satkhira and acting civil surgeon met the victim when the 10-year old girl described the brutal torturing on her. The girl said that she was taken to the residence of the employer one year and two months ago. Later, her employer shifted her to his father-in-law's residence in Dhaka where she faced brutal torturing for 11 months. In the new place of employment, the owner of the house used to beat the child tying her hands and legs. She had to eat rotten boiled rice. The house owner used to provide her meals only two times in a day. Later, Police rescued the ill-fated child domestic worker from residence of the concerned Judicial Magistrate. A doctor of the medical team member, also a child specialist, said that several injury marks were found in the whole body of that child worker. In spite of this brutal incident, that victim's father did not file any case.<sup>149</sup>

Most of the times, the poor family members of the domestic workers do not report the incidents that are committed to the domestic workers out of fear or shame. These incidents also prove how urgent it is to bring the domestic workers under the national labour legislations. Setting labour standards for these workers may also prevent the human rights violation of these people.

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<sup>147</sup> Ibid

<sup>148</sup> International Domestic Workers' Federation (IDWFED): Bangladesh: 797 incidents of inhuman torture on domestic workers took place in the last 10 years, published Mar 23, 2013

<sup>149</sup> International Domestic Workers' Federation (IDWFED): Bangladesh: Human Chain to protest torture on child domestic worker BEETHI — published Aug 22, 2015

Domestic workers are falling victim to inhuman tortures committed by their employers across the country. They perform many works at their employer's house from morning till night. But it is a matter of regret that this occupation has been neglected. They are not safe even staying at private houses and both their physical and mental developments get hampered. Most of those who work as domestic workers at residential places are adolescent girls and boys. It is hard to determine their actual number because of lack of registration. There is no standard relating to their wages, working hours and leave. The helpless and poor workers cannot place allegations against offenders if they become victim of any injustice. News reports of such incidents perpetrated on helpless rural adolescent workers do not come out of wall of those houses as the incidents remain suppressed due to lack of registration and inspection. No effective initiative has been taken so far to address these problems faced by these workers in Bangladesh. Unfortunately, the domestic workers also cannot organise themselves to highlight their issue as most of them live beyond the poverty line.<sup>150</sup>

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<sup>150</sup> Supra note 148

## Chapter 5

### Initiatives taken in other countries towards the process of formalization of Domestic Workers:

This chapter discusses the initiatives that are being taken towards the process of formalization of the sector of domestic work in few neighbouring countries of Bangladesh to emphasize that similar measures may also be taken in Bangladesh to bring the domestic workers under the coverage of specific regulation to provide better protection of their rights.

#### **5.1 Philippines:**

In Asia, the Philippines played a principal role in the adoption of ILO's Convention No.189 on Domestic Workers.<sup>151</sup> The Philippine Government is to be commended for being the second country, after Uruguay, to ratify ILO Convention No.189. It was signed by President Benigno S. Aquino on 18 May 2012, then ratified by the Philippine Senate on 6 August 2012 that brought this landmark instrument into legal force to advance the situation of domestic workers worldwide.<sup>152</sup> The ratification of ILO Convention No.189 by Philippine is a milestone for an estimated 2.5 million Filipino domestic workers both in its territory and abroad that guarantees the protection and promotion of their rights.<sup>153</sup>

The Government's commitment to protect domestic workers was further strengthened when it enacted the law the Philippines passed Republic Act (RA) 10361 (the Batas Kasambahay or Domestic Workers Law) in January 2013 in compliance with the ratification.<sup>154</sup> Among the most important features of the law are articles on the following:

- upholding the rights and dignity of domestic workers;
- provisions for their protection; the use of a formal contract that outlines the responsibilities of both the employer and employee and a mechanism for the settlement of disputes;

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<sup>151</sup> The rights of domestic workers, A primer on ILO Convention No. 189 (Domestic Workers Convention) & RA 10361 Domestic Workers Act (Batas Kasambahay), Philippine Migrants Rights Watch (PMRW) International Labour Organization (ILO) 2014

<sup>152</sup> Ibid

<sup>153</sup> National Statistics Office, July 2011 Labour Force Survey and POEA 2007–2011 Overseas Employment Statistics

<sup>154</sup> The rights of domestic workers, A primer on ILO Convention No. 189 (Domestic Workers Convention) & RA 10361 Domestic Workers Act (Batas Kasambahay), Philippine Migrants Rights Watch (PMRW) International Labour Organization (ILO) 2014

- the setting of a minimum wage and its future adjustment; and the provision of compulsory social security benefits for domestic workers.<sup>155</sup>

This law serves as a complement to ILO Convention No.189. The Philippines has performed as a pioneer member of the ILO in Advocating for an international framework on protecting the Rights of domestic workers.<sup>156</sup>

The number of domestic workers in the Philippines is estimated at between 600,000 and 2.5 million.<sup>157</sup> Visayan Forum Foundation, a civil society organization that advocates for domestic workers, estimates that around 1 million domestic workers are children.<sup>158</sup> Domestic work represents over 11% of female employment and more than 5.3% of total employment in the Philippines.<sup>159</sup> This organization is solely dedicated for domestic workers and run by women, along with a strong civil society.<sup>160</sup> They organized their campaign not just for a new law, but also for a changed attitude towards domestic workers.<sup>161</sup>

Leading politicians, including President Benigno Aquino supported the Batas Kasambahay which is popularly known as “Magna Carta for Domestic Workers”.<sup>162</sup> Secretary of Labour Rosalinda Baldoz had been personally involved in promoting the Convention 189 and launched the “I Support Kasambahay” Campaign of the Department of Labour and Employment to raise awareness of the government’s plan to push for the ratification of the ILO Convention and the speedy passage of the bill.<sup>163</sup> Local governments’ measures were far more advanced.<sup>164</sup> Since 2005, the local government units in the Philippines have been passing local ordinances to register and provide programs for domestic workers in major

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<sup>155</sup> Ibid

<sup>156</sup> International Labour Organization 2014: Promoting Transition towards Formalization: Selected Good Practices in Four Sectors

<sup>157</sup> See estimates made by Visayan Forum Foundation,  
[http://sumapi.weebly.com/uploads/1/0/5/3/10536320/basic\\_facts\\_on\\_filipino\\_domestic\\_workersKpdf.pdf](http://sumapi.weebly.com/uploads/1/0/5/3/10536320/basic_facts_on_filipino_domestic_workersKpdf.pdf)  
 [accessed 29 Aug. 2014].

<sup>158</sup> Schwenken/ Heimeshoff, 2011: Domestic Workers Count: Global Data on an often Invisible Sector, p. 10; also ILO LABOUR STA 2008

<sup>159</sup> Philippine Labor Force Survey Factsheet (October 2011). Available at:

<http://www.census.gov.ph/data/sectordata/2011/lf110401.pdf>;

ILO (2011) Domestic work in Asia and the Philippines Factsheet. Available at:

[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_169117.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_169117.pdf)

<sup>160</sup> Supra 156

<sup>161</sup> Ibid

<sup>162</sup> Ibid

<sup>163</sup> Ibid

<sup>164</sup> Supra 12 page,27

cities.<sup>165</sup> Afterwards, they successfully started implementing their responsibilities under the Kasambahay Bill.<sup>166</sup>

The Domestic Workers Act is a landmark piece of labour and social legislation that extends labour rights, benefits and protection to all the domestic workers in the Philippines.<sup>167</sup> The Act provides for the protection of domestic workers against abuse, debt bondage and the abolition of child labour.<sup>168</sup> It sets minimum standards for wages, hours and days of rest, and other benefits for domestic workers.<sup>169</sup> Moreover, extends social security and Public health insurance to the sector and provides for mechanisms for quick response to abuses and accessible means to redress grievances.<sup>170</sup>

Some major protections in the proposed Batas Kasambahay law have been mentioned below:

- A written contract signed before starting work, in a dialect or language understood by both worker and employer;
- Regularly paid minimum wages and registration of employment with local government;
- 5day incentive leaves per year in addition to the 1 rest day per week and a maximum daily working hours with provisions for overtime pay;
- Workers' coverage under the social security system, including health insurance;
- Basic accommodation and meals for live-in domestic workers;
- Paid annual leave and maternity and paternity leave for domestic workers; and
- Protection against abuse and violence, forced labour, debt, bondage and trafficking in persons and clear penalties in case of violation of the law.<sup>171</sup>

In fact, the advocacy and movement for decent work by the dynamic civil society SUMAPI, Visayan Forum Foundation and other groups representing domestic workers has resulted in Batas kasambahay Law.<sup>172</sup> The term 'kasambahay' means household helper which has preferably been used for the domestic workers in order to replace the other less respectful terms for them.<sup>173</sup> Changing the name for domestic work has transformed public attitudes

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<sup>165</sup> Philippine National Commission on Women (2009) "Kasambahay (Household Workers) Bill Situationer"

<sup>166</sup> UN WOMEN and IUTC: Domestic Workers Count Too, Implementing Protections for Domestic Workers (2013, "p."27).

<sup>167</sup> Ibid

<sup>168</sup> Ibid

<sup>169</sup> Ibid

<sup>170</sup> Ibid

<sup>171</sup> Supra 12 page,27

<sup>172</sup> Ibid

<sup>173</sup> Ibid

towards it which can be followed in developing country like Bangladesh. In 2006, the Government declared April 30 National Domestic Workers' Day which civil society groups actively celebrate every year.<sup>174</sup> Visayan Forum Foundation and SUMAPI also co-launched a Technical Working Group for the Batas Kasambahay to advocate for their own version.<sup>175</sup> They co-organized the third national Domestic Workers' Summit from 9-11 November 2011, launching their campaign to ratify the ILO Convention and pass the bill into law.<sup>176</sup> Domestic workers and their supporters also had regularly been making television appearances supporting the law.<sup>177</sup> .

In brief The Philippines Formalization focused on;

- Strong local and national civil society involvement;
- Government's support at highest levels;
- National Day for domestic workers;
- Recognition of domestic work as occupation;
- Awareness campaigns on rights and dignity;
- Comprehensive legislation protecting the rights of domestic workers and
- Local government commitment.<sup>178</sup>

The combined effort of both Government and Civil Societies in the Philippines towards formalization of domestic workers has resulted in ratifying the Domestic Workers Convention, 2011 and thereby set an exemplary framework for the developing nations. In Bangladesh, we also need honest will of both Government and NGOs who would unquestioningly work towards formalization of domestic workers to provide decent work for them in private households as other workers enjoy at their work place.

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<sup>174</sup> Ibid

<sup>175</sup> Ibid

<sup>176</sup> Ibid

<sup>177</sup> Ibid

<sup>178</sup> Supra 156

## **5.2 India:**

In India, the demand for domestic labour is on the increase. Rapid economic changes also widely influenced the lives of lower income groups that make their livelihood difficult for families if both the spouses do not get engaged in paid work.<sup>179</sup> Expensive living costs, lack of education and health facilities compelled innumerable women who are less educated or illiterate and unskilled, to engage in domestic work as they often left with no option.<sup>180</sup> Even though there are certain prominent similarities between domestic workers of India and elsewhere in the world, but the conditions differ owing to cultural specificities of each country.<sup>181</sup> In India, low wages, no regulation over wage structure, fear of termination, no guaranteed livelihood options, no paid holidays, and no sick or casual leaves are common problems faced by domestic workers.<sup>182</sup> Moreover, there are certain humiliating practices existed from the centuries old and inhuman caste system which can still be seen in the case of India.<sup>183</sup> During some individual and group interviews, some workers expressed sorrow about the humiliating practices of the caste system in their employer's homes.<sup>184</sup> Even though the Constitution of India prohibits untouchability under Article 17, some workers explained the way their employees practice untouchability even today.<sup>185</sup> They are forbidden from touching certain objects in the households, such as Hindu idols of worship, certain utensils, and rooms in the house where prayers are offered.<sup>186</sup> In some instances, domestic workers are not allowed to enter the house through the kitchen.<sup>187</sup> In India, the overall labour conditions are not better than in Bangladesh. But the measures being taken at present time is undoubtedly praiseworthy in this country where custom plays a vital role in regulating the daily life of many Indians. For this, the contribution of the Indian Government is undeniable.

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<sup>179</sup> Suneetha Eluri, Alok Singh: *Unionizing Domestic Workers: Case Study of the INTUC- Karnataka Domestic Workers Congress*, ISBN: 978-92-2-126416-3, ILO, 2013

<sup>180</sup> Ibid

<sup>181</sup> Ibid

<sup>182</sup> Ibid

<sup>183</sup> Ibid

<sup>184</sup> Ibid

<sup>185</sup> Ibid

<sup>186</sup> Ibid

<sup>187</sup> Ibid

In 2006, the Indian Government declared domestic work to be hazardous for the children and thus prohibited the employment of children under the age of eighteen years as domestic workers.<sup>188</sup> In the same year, the National Commission for Enterprises in the Unorganized Sector (NCEUS) suggested for some measures to protect the workers in the informal economy through labour regulation and social security coverage.<sup>189</sup>

In 2008, a Domestic Workers' (Registration, Social Security and Welfare) Bill was proposed by India's National Commission of Women (NCW), which, in its statement of objectives, denotes to the severe exploitation faced by domestic workers in the absence of national legal protection.<sup>190</sup> The central government issued directives to the respective provincial governments to extend the existing health insurance scheme, the Rashtriya Swasthya Bima Yojana (RSBY), to the domestic workers in 2011.<sup>191</sup> According to assessments of the Ministry of Labour, the scheme expects to cover an estimated 4.75 million domestic workers in the country.<sup>192</sup>

In April 2012, the Indian Labour Conference recognised domestic labour as work and several provinces have declared minimum wages for domestic workers.<sup>193</sup> Domestic workers have also been included in the Rashtriya Swasth Bima Yojana (RSBY- a national health insurance scheme) subsidised by the Central and State Governments.<sup>194</sup>

Some state governments, such as those in Karnataka, Tamil Nadu, Andhra Pradesh, Kerala, Bihar, Jharkhand and Rajasthan, have taken legislative measures to include domestic workers into the schedule of the Minimum Wages Act, 1948.<sup>195</sup> The ministry also directs the states to delegate the responsibility of registration of domestic workers to the domestic workers' trade unions (DWTUs), residential welfare associations (RWA), or employers of domestic workers.<sup>196</sup> Labour departments in the southern states such as Andhra Pradesh, Karnataka, Kerala, and Tamil Nadu have revised the certification mechanism.<sup>197</sup>

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<sup>188</sup> Domestic work was included in the list of hazardous occupations for minors (Notification No. S.O. 1742 (E) dated the 10th October, 2006 published in the Gazette of India, Extraordinary)

<sup>189</sup> Indispensable yet unprotected: Working conditions of Indian Domestic Workers at Home and Abroad/ International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) – Geneva: ILO, 2015. ISBN: 978-92-2-129839-7

<sup>190</sup> Ibid

<sup>191</sup> Ibid

<sup>192</sup> Ibid

<sup>193</sup> Ibid

<sup>194</sup> Ibid

<sup>195</sup> WSM, 2011:11

<sup>196</sup> Supra note 156

<sup>197</sup> Ibid

They made the physical presence of individual domestic workers mandatory for registration at the labour department of the various states which was further opposed by some of the trade unions in Tamil Nadu and Karnataka.<sup>198</sup> Few provinces have also established State Welfare Boards for Domestic Workers to register this group of workers and give them access to social benefits and minimum social security.<sup>199</sup> The Maharashtra Domestic Workers Welfare Board Act, 2008 provides pension, health insurance, maternity leave and other welfare benefits to domestic workers which is indeed a commendable initiative.<sup>200</sup> This state law gives domestic workers the same status as other workers in the unorganized sector that also contains provisions on daily wages, paid annual leave and weekly days off.<sup>201</sup>

In the case of Kerala, more than 35,000 domestic workers were registered in 2012 under the scheme and Jharkhand issued smart cards to 2,966 domestic workers in 2012 where the necessary institutional mechanism was established to ensure domestic workers' access to RSBY.<sup>202</sup> In other states, the provincial governments are working towards collecting data to assess the size of domestic workers in their respective states to establish a mechanism to register workers with the labour departments, identify the insurance agencies, call for tenders, notify the hospitals and so on.<sup>203</sup> According to the Ministry of Labour, current efforts need to be significantly strengthened so that RSBY and other programmes for domestic workers and other unorganized sector workers can be effectively delivered.<sup>204</sup>

Notwithstanding the major progress made in some states, there is a high demand of a nationally binding domestic worker bill and legislation on part of the National Domestic Workers' Movement (NDWM) and other Indian domestic worker networks including the trade unions which expressly recognizes domestic work as an occupation and regulates minimum wages and working conditions along with unionization.<sup>205</sup> The National Commission of Women (NCW), together with the NDWM and the National Platform for Domestic Workers, representing 16 unions for domestic workers and five support organizations from 23 Indian states, are working towards the enactment of a comprehensive legislation and social security schemes, establishing a registry of workers, employers and employment agencies, and setting up state and district boards to monitor and support domestic workers.<sup>206</sup>

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<sup>198</sup> Ibid

<sup>199</sup> Ibid

<sup>200</sup> Ibid

<sup>201</sup> Ibid

<sup>202</sup> Ibid

<sup>203</sup> Ibid

<sup>204</sup> Ibid

<sup>205</sup> Sources available at: <http://domesticworkerrights.org/?q=node/11>

<sup>206</sup> Supra 156

In brief, the formalization of domestic worker in India Focused on;

- National Bill for Domestic Workers
- Policy inclusion (recognition of domestic work as an occupation)
- Registration and ID card
- Access to health insurance and social security
- Selected state level legislation and comprehensive coverage
- Large-scale social mobilization and Organizing (at state, national and international levels)<sup>207</sup>

The Indian Government has not yet ratified ILO Convention No.189 on Decent Work for Domestic Workers.<sup>208</sup> While elaborating this issue Labour Minister Bandaru Dattatreya said "In India we ratify an ILO Convention only when the national laws and practices are brought fully into conformity with the provisions of the Convention in question. Since the national laws and practices are not in conformity with the provisions of the convention, India has not yet ratified the ILO Convention No.189."<sup>209</sup> About National Policy on Domestic Workers, he informed the House that the Policy is under active consideration of the government.<sup>210</sup>

As a neighbouring country and also a former part of India, these measures taken by the Indian Government can be taken as examples to take fruitful initiatives in Bangladesh towards improving both labour and human rights standards of domestic workers. This country is still far behind to take such initiatives at national level.

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<sup>207</sup> Ibid

<sup>208</sup> India doesn't ratify ILO convention on domestic workers: Govt. Press Trust of India, New Delhi, March 18, 2015

<sup>209</sup> Ibid

<sup>210</sup> Ibid

### **5.3 Nepal:**

Although Nepal does not have specific legislation to regulate the domestic workers, but Nepalese government is taking initiatives to ratify the ILO'S Domestic Workers' Convention, 2011. In 2014, December 8, an Interaction Seminar with Parliamentarians on Nepalese Law on Domestic Work and ILO Convention 189 was held in Kathmandu, Nepal where 22 parliamentarians from various parliamentary committee such as development committee, international relation and labour committee, women and children committee and Bills Committee attended the program.<sup>211</sup> The program was hosted with support from International Domestic Workers Federation (IDWF) and in conjunction with Human Rights Magna Meet 2014.<sup>212</sup> This program was a huge success which concluded with the decision that Nepal shall ratify the ILO Convention no 189 and the new Labour Code shall include special Section on Domestic Work.<sup>213</sup> At the end, all parliament members, political parties were approached to submit an official request to relevant ministry and parliament committee to consider officially about the conclusions of the interaction.<sup>214</sup>

The Nepal Independent Domestic Workers Union (NIDWU) was formed in February 2006 that was in the design of national federation of Domestic workers along with a number of 533 registered workers.<sup>215</sup> The first National Congress took place in Kathmandu in 2010.<sup>216</sup> At present, it has 15 organized local committees with more than 1500 workers.<sup>217</sup>

Nationally, the NIDWU is associated with the General Federation of Nepalese Trade Union (GEFONT).<sup>218</sup> Through the support of the GEFONT, a national trade union centre of Nepal concentrating on the plight of the domestic workers, the NIDWU organizes and campaigns for important issues such as registration of all domestic workers under municipal and local development authorities; employment contracts for domestic workers; minimum wage

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<sup>211</sup> International Domestic Workers Federation (IDWF): Nepal: Parliamentary Discussion on Law on Domestic Work and C189 by IDWFED — published Dec 08, 2014, Source available at:

<http://www.idwfed.org/en/updates/nepal-parliamentary-discussion-on-law-on-domestic-work-and-c189>

<sup>212</sup> Ibid

<sup>213</sup> Ibid

<sup>214</sup> Ibid

<sup>215</sup> Supra (International Labour Organization 2014: Promoting Transition towards Formalization: Selected Good Practices in Four Sectors)

<sup>216</sup> Ibid

<sup>217</sup> Ibid

<sup>218</sup> Ibid

legislation; work benefits such as medical insurance, social security, and fixed 8-hour working day and holidays; family visit vacation twice a year with transportation costs provided by the employer; and a prohibition on children below 14 years to be employed as domestic workers.<sup>219</sup> The Active Domestic Workers Consultancy (ADWC), established on 16 May 2010, is directly involved in skills training and job placement of domestic workers.<sup>220</sup> Their main objective is to create an environment for promoting professional domestic workers.<sup>221</sup> ADWC's working method allows domestic work to professionalize and support workers in finding a decent work environment.<sup>222</sup> NIDWU and GEFONT are also engaged in advocacy work to promote the adoption of a new ILO international standard on domestic work.<sup>223</sup>

The formalization of domestic workers in Nepal focused on;

- Promotion of Trade Union Organizations;
- Promotion of adoption of ILO Convention no 189 by the unions.
- Registration and ID cards Legislation;
- Employment contract; Inspection;
- Workers' rights and Social protection;
- Skills development;
- Placement services.<sup>224</sup>

Significant measures have been taken in many Asian Countries that include recognition of 'domestic work' as an 'work' inclusion of domestic work in labour policies and specific provisions to ensure minimum wages, access to social security or fixed working hours, employment contracts etc. Although, there cannot be a definite solution for ensuring labour and human rights standard to the domestic workers, but the strategic decisions taken in these countries can be followed by Bangladesh Government to adopt policies within the context of this country and obligations under relevant international labour and human rights law.

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<sup>219</sup> Ibid

<sup>220</sup> Ibid

<sup>221</sup> Ibid

<sup>222</sup> Ibid

<sup>223</sup> Ibid

<sup>224</sup> Ibid

## Chapter 6

### Necessities of Formalization of domestic work in Bangladesh

This chapter analyses the necessity to formalize the sector of domestic work in the perspective of Bangladesh. Traditionally, there are some socio-economic and cultural aspects that encourage or compel children and women to search domestic jobs where there is no clear terms of employment and registration.<sup>225</sup> In Bangladesh, currently, there is no actual data regarding the total number of domestic workers.<sup>226</sup> The report of International Domestic Workers Federation, shows that almost 14 lac domestic workers are engaged in household works in Bangladesh.<sup>227</sup> Formalization of domestic workers is essential to ensure labour standards and as well as to improve the other human rights standards of these workers in Bangladesh. For that, adopting international obligation through ratification of related convention such as Domestic Workers' Convention, 2011 will be most effective in a country like Bangladesh, where absence of accurate data and information is a main problem. However, the process of formalization may accelerate towards achieving some major goals. These points have been discussed in details in this chapter.

#### **6.1 Eradicating Child Labour from Domestic work:**

Bangladesh has been a party to the Worst Forms of Child Labour Convention, 1999 (No. 182) since March 12, 2001.<sup>228</sup> Article 3 of this convention defines the worst forms of child labour as “all forms of slavery or practices similar to slavery, such as sale and trafficking in children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or pornographic performances; and the use, procuring or offering of a child for illicit activities, particularly for the production and trafficking of drugs”.<sup>229</sup>

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<sup>225</sup> Imtiaz Ahmed Sajal: Legal Protection for the Domestic Workers in Bangladesh, The Daily Observer, Thursday, 24 December, 2015,

<sup>226</sup> Ibid

<sup>227</sup> International Domestic Workers Federation: Bangladesh: Cries of domestic workers still go unheard

<sup>228</sup> See [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103500](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103500)

<sup>229</sup> This definition is based on Article 3 of the 1999 ILO's Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Under the Bangladesh Domestic Workers Policy, 2015, which has not been implemented yet, Children who are aged 12 and above may be engaged in “light work” that does not pose a risk to their mental and physical development and does not interfere with their education.<sup>230</sup> However, there has not been any list that shows which works can be categorized as ‘light’ or ‘heavy’.<sup>231</sup> Therefore, the draft policy can be argued by many in future to be sceptical. A comprehensive list containing categories of works should be drawn up to make the policy more effective. As mentioned earlier, India has already declared domestic work to be hazardous for the children and thus prohibited the employment of children under the age of eighteen years as domestic workers.<sup>232</sup> Following that, the Government of Bangladesh can concentrate on elimination of child labour from domestic level and takes initiatives to declare this occupation to be hazardous for the children in Bangladesh too.

A research report framed by the Bangladesh Institute of Labour Studies (BILS) shows that 33.6% of the domestic workers are children among the total domestic workers in Bangladesh and their age range is from 5 to 14.<sup>233</sup> The Ministry of Labour and Employment adopted a National Child Labour Elimination Policy 2010, which provides a framework to eradicate all forms of child labour by 2015. Its aims include, withdrawing children from hazardous jobs; improving income generating opportunities for parents so they are not so reliant on child income; offering incentives for working children to attend school; enacting laws and improving law enforcement to eliminate child labour.<sup>234</sup> However, to achieve the goals of this policy, the government need to reduce the number of child labourers from domestic work which can be made possible if this sector of domestic work itself become formalized. Again to be mentioned that, the Government of Bangladesh launched ‘Food for Education’ (FFE) program on a large-scale pilot basis.<sup>235</sup> The program was designed to combat poverty and malnutrition by developing long-term human capital.<sup>236</sup> Many children from poor families in Bangladesh could not attend school mainly because they contribute to their family’s livelihood.<sup>237</sup> The FFE program used to provide a free monthly ration of food grains to poor families if their children

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<sup>230</sup> See Section 7.3 of The draft of Domestic Workers Policy, 2015 (Available only in Bengali)

<sup>231</sup> See The draft of Domestic Workers Policy, 2015

<sup>232</sup> Supra 188

<sup>233</sup> Ibid, page 6

<sup>234</sup> UNICEF: Child Labour in Bangladesh < [http://www.unicef.org/bangladesh/Child\\_labour.pdf](http://www.unicef.org/bangladesh/Child_labour.pdf)>

<sup>235</sup> Akhter U. Ahmed and Carlo del Ninno: Food for Education Program in Bangladesh: An Evaluation of its Impact on Educational Attainment and Food Security, Food Consumption and Nutrition Division of the International Food Policy Research Institute (IFPRI), Discussion paper: 138

<sup>236</sup> Ibid

<sup>237</sup> Ibid

attend primary school.<sup>238</sup> . These programmes have the potential of sustainable development by empowering the future generations through education.

Due to deteriorating economic condition of the poor families of Bangladesh, child labour is widely accepted and very common in Bangladesh. Many poor families rely on the income generated by their children for survival. Moreover, employers often prefer to appoint children in domestic households because they provide their labour in a very low price and considered to be more compliant and obedient than adults. Therefore, a large number of children are engaged at household works in Bangladesh even today.

Since, in domestic work, the employees are engaged in works at private houses, therefore, a comprehensive law would be more beneficial to abolish child labour from domestic households by formalizing this sector. Article 4(2) of Convention No. 189, requires its members to take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.<sup>239</sup> Ratification of the Domestic Workers Convention, 2011 will hopefully be much advantageous to eradicate child labour from the private houses and essential to remove all forms of child labour in future as planned by the Government of Bangladesh.

## **6.2: Removing Forced Labour from Domestic work:**

Bangladesh is a party to the Forced Labour Convention since 1972.<sup>240</sup> Article 2 of this convention says that , for the purposes of this Convention the term ‘forced or compulsory labour’ shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.<sup>241</sup> Domestic workers are particularly vulnerable to forced labour because of the unprotected nature of their work and the highly personalized relationship between the worker and employer.<sup>242</sup> Anti-slavery International has over the years made several submissions to the Human Rights Commission/Council concerning the slavery-like conditions in which a number of adult and

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<sup>238</sup> Ibid

<sup>239</sup> See Article 4(2) of The Domestic Workers’ Convention, 2011

<sup>240</sup> Source available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103500](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103500)

<sup>241</sup> See Article 2 of the Forced Labour Convention, 10930

<sup>242</sup> ILO, A global alliance against forced labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILO, Geneva, 2005, page 50

child domestic workers are trapped.<sup>243</sup> The ILO estimates that there are 20.9 million victims of forced labour worldwide, with domestic work one of the most frequently cited economic sectors.<sup>244</sup> In the year 2013, the Global Slavery Index put Bangladesh 10th on the list of countries with the highest number of enslaved people.<sup>245</sup> Domestic work becomes forced labour in case of, deception and false promises concerning conditions of work, lack of freedom to change employers, physical or sexual abuse, physical confinement etc.<sup>246</sup> In Bangladesh, many of the children and women who try to find a work at private houses often get trapped by their employers and become victims of these types of abuses. It is also a major problem that forced labour at domestic sphere are often not reported due to the fact that this sector is an informal one. To combat forced labour at domestic work, the Domestic Workers Convention, No. 189 (2011), calls on governments to take measures to extend national legal protections to domestic workers.<sup>247</sup>

Although, the existing laws to combat forced labour covers all citizens including domestic workers in Bangladesh, but to reduce forced labour from domestic households, these laws are not adequate. Being more specific in nature, ratification of this convention specially to deal with this sector may bring more positive results to eliminate forced labour.

### **6.3 Employment Relationship:**

Domestic work is a type of occupation where the relations between the employers and employees are basically different comparing to other occupations under formal economy.<sup>248</sup> Bringing this group of workers under the law can contribute to moving towards a formal employment relationship from informal and uncertain work arrangements.<sup>249</sup>

In Bangladesh, it is a very common occurrence that an employer who is not satisfied with the performance of a domestic worker, often send that him/her to other house unknown to the

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<sup>243</sup> Supra 2

<sup>244</sup> See also: Questions and answers on forced labour, 1 June 2012, ILO-DECLARATION, Geneva, available at [http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS\\_181922/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_181922/lang--en/index.htm).

<sup>245</sup> Lipika Pelham, Enslaved Abroad, Oppressed at Home, Modern Slavery in Bangladesh, The New York Times, OCT. 29, 2014

<sup>246</sup> Supra 2, page 29.

<sup>247</sup> ILO, Domestic workers across the world: Global and regional statistics and the extent of legal Protection Page- 45

<sup>248</sup> Supra 2 page 18

<sup>249</sup> Effective protection for domestic workers: a guide to designing labour laws / International Labour Office, Conditions of Work and Employment Programme, Industrial and Employment Relations Department – Geneva: ILO, 2012. ISBN 978-92-2-125275-7, page 15, 16

worker. In this regard, a legal framework can always provide a clear vision regarding the rights, entitlements and obligations of both parties to the employment relationship and require them to set out in written forms the terms and conditions of employment.<sup>250</sup> A written contract for domestic workers can be a significant step to bring domestic work under formal economy and reduce the vulnerability of domestic workers of being abused and can also play an important role in empowering domestic workers within the employment relationship.<sup>251</sup>

Absence of written contact places the employment relation outside the scope of labour inspection too.<sup>252</sup> The draft of Bangladesh Domestic Workers Protection and Welfare Policy, 2015 has not emphasised on written contract for appointment of domestic workers or employment relations.<sup>253</sup> Whereas, The Domestic Workers Convention in its Article 7 requires its members take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements.<sup>254</sup> Therefore, enactment of law and policy would not fairly provide adequate labour standards in the perspective of Bangladesh if those are not in conformity of international standards. Formalization of domestic workers would mean to efficiently maintain international labour standards as well. Bangladesh has recently been listed as a low middle income country by the world bank in terms of its economic growth.<sup>255</sup>

Presently the economic conditions of Bangladesh are far better than its previous time and comparing to few other South East Asian countries. Therefore, it is quite practicable for Bangladesh government to start the process of formalization of domestic workers through introducing process of registration and ID cards systems for domestic workers. Here, the initiatives taken in Nepal is to be mentioned again which has already introduced these systems for the domestic workers.

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<sup>250</sup> Ibid

<sup>251</sup> Ibid

<sup>252</sup> Supra 2 page-18

<sup>253</sup> See The Domestic Workers' Protection and Welfare Policy, 2015 (Available only in Bengali)

<sup>254</sup> See Article 7 of The Domestic Workers Convention, 2011

<sup>255</sup> Source available at: <http://data.worldbank.org/income-level/LMC>

#### **6.4 Living Conditions:**

As a matter of principle, there should be a scope for agreements between the domestic workers and their employers or potential employers as regard to reside in the household. Standards regarding living conditions are a vital for the domestic workers who reside in the house hold in order to promote decent work for them.<sup>256</sup> A report of Bangladesh Institute of Labour Studies (BILS) shows that, 33.33% of the total domestic workers in Bangladesh get a place for their sleeping at the kitchen, 20.67% sleep on the floors of the bedrooms, 20% sleep in the living rooms, 16.67% in veranda, 3.33% in the store rooms and only 6.67% get separate rooms.<sup>257</sup> Therefore, efforts to ensure decent living conditions for the workers concerned may involve setting out the employer's obligations on these matters in the law.<sup>258</sup> Aspects to be addressed include the nature of the accommodation, the worker's privacy and the quantity and quality of food.<sup>259</sup> The Domestic Workers Convention states that in the case of live-in workers, accommodation and food are among the terms and conditions about which the workers should be informed, preferably through written contracts.<sup>260</sup> Therefore, ratification of this convention can be more beneficial as to enacting comprehensive laws for these workers.

#### **6.5 Improving conditions of work:**

Domestic workers who usually live at their employers' private houses often have to undertake long working hours up to 16 hours a day, seven days a week.<sup>261</sup> Sometimes, they have to work for longer hours. During the time of their appointment, the tasks to be assigned to the worker are usually not specified which causes huge workload that is beyond the capacity of the worker and disproportionate to the wage paid.<sup>262</sup> Moreover, there is a tendency on part of the employers to increase the number of chores to be performed.<sup>263</sup> BILS reports shows that the average working hours of the domestic workers in Bangladesh is 10.73 Hour with an average wage of BDT 509.60 (below US \$ 7).<sup>264</sup>

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<sup>256</sup>Supra 5, page 45

<sup>257</sup> Domestic Workers in Bangladesh: Presented by Murshida Akter Nahar, Secretariat: Bangladesh Institute of Labour Studies-BILS

<sup>258</sup> Supra 252

<sup>259</sup> Ibid

<sup>260</sup> See Article 7 of Convention No. 189

<sup>261</sup> Grumiau, S., Briefing note on domestic work, ACTRAV, ILC 2007

<sup>262</sup> Supra 2 page 20

<sup>263</sup> Ibid

<sup>264</sup> Supra 1

More than 87 per cent of employment in Bangladesh is informal.<sup>265</sup> Domestic workers form a major part of this informal sector. Almost all the workers in Bangladesh who work at domestic households live beyond poverty line and lack legal awareness. Therefore, they become easily convinced to work at any cost. The 2015 draft policy for Domestic Workers mentions that, the wages of domestic workers shall be fixed in negotiation with both workers and employers.<sup>266</sup> This provision does not speak about minimum wages for the domestic workers and therefore is not sufficient to ensure decent work for these workers which will provide them opportunities to lead a life with social dignity.

Domestic workers may also lack protection of their wages if the relevant legal provisions are set out in laws or regulations that exclude domestic workers from their scope.<sup>267</sup> Article 11 of the Domestic Workers Convention, 2011 specifically mentions that “Member state shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists.”<sup>268</sup> There is a provision for establishing wage board for fixing or recommending minimum rates of wage in the Bangladesh Labour Act, 2006.<sup>269</sup> However, since the draft of the Domestic Workers’ Protection and Welfare Policy, 2015 does not suggest for fixing a minimum rate for wages, therefore, it is yet to comply with the international standards.

Separate training centres for skill development of the domestic workers may be formed in Bangladesh. Most of the times, the household employers oblige the workers to perform every task from cleaning to cooking manually as they are not skilled enough to operate different types of machines used for household chores. Sometimes, they are not even allowed to touch these machines. To deal with these situations, it is necessary to train up the workers so that they can be more qualified to have better remuneration and perform their tasks efficiently.

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<sup>265</sup> The ILO: BANGLADESH SEEKING BETTER EMPLOYMENT CONDITIONS FOR BETTER SOCIO-ECONOMIC OUTCOMES, Page-97

<sup>266</sup> See section 7.1 of The draft of Domestic Workers Policy, 2015 (Available only in Bengali)

<sup>267</sup> See, for example, the ILO Committee of Experts’ comments addressed by to the Syrian Arab Republic (Direct Request made in 2007), Lebanon (Direct Request made in 2008) and Turkey (Direct Request made in 2008) in respect to Convention No. 95. In these cases, domestic workers were excluded from the Labour Code, which, however, contained the provisions giving effect to the Convention. Direct Requests and observations addressed by the ILO Committee of Experts to ILO Member States can found on the ILO’s database on international labour standards at <http://www.ilo.org/global/standards/lang--en/index.htm>.

<sup>268</sup> See Article 11 of the Domestic Workers Convention, 2011

<sup>269</sup> See section 138 of the Bangladesh Labour Act, 2006

Domestic workers have the right to have their working hours limited like all other workers who work in formal sectors.<sup>270</sup> Fixing working time is essential especially where the workers reside in the household for which they work (“live-in workers”) and the employers require them to work for them at any time.<sup>271</sup> Since domestic workers usually provide care for family members, therefore, working time regulation is important to ensure that such services do not involve excessively long hours.<sup>272</sup> Regulating working time creates transparency regarding the remuneration of domestic workers.<sup>273</sup> In this area some tasks may have to be performed beyond regular hours of work. In order to deal with the hours of work effectively, legislative and regulatory instruments should address these issues clearly.<sup>274</sup>

Also, legislative provisions in regard to sick leave may determine the amount of leave provided and define the qualifying requirements for such leave.<sup>275</sup> Temporary absence from work because of illness or injury should not constitute a valid reason for termination of employment.<sup>276</sup> Social security, including sickness benefits, to ensure income during sick leave should be gradually extended to domestic workers, where this is not yet the case.<sup>277</sup> As appropriate, the duty to remunerate or provide other forms of support to the worker during sickness may be placed on the employer.<sup>278</sup>

Convention No. 189 emphasizes the importance of setting standards on hours of work, as well as overtime, daily and weekly rest, sick leave, paid annual leave, and standby periods, with the aim of achieving levels of protection for domestic workers equivalent to those enjoyed by other workers. In this regard, the Convention stresses the need to take into account the features of domestic work which may vary from country to country in the design of such regulations.<sup>279</sup>

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<sup>270</sup> Universal Declaration of Human Rights, Article 24.

<sup>271</sup> Supra 5

Department – Geneva: ILO, 2012. ISBN 978-92-2-125275-7, page 49

<sup>272</sup> Ibid

<sup>273</sup> Ibid

<sup>274</sup> D. McCann and J. Murray: The legal regulation of working time in domestic work, Conditions of Work and Employment Series No. 27, (Geneva, ILO, 2011).

<sup>275</sup> Supra 5 page 69

<sup>276</sup> This is envisaged in Article 6(1) of Convention No. 158. In accordance with this Convention, the definition of what constitutes temporary absence from work, the extent to which medical certification is required and possible limitations to the application of the principle set out in Article 6(1) are to be determined by national laws or regulations, collective agreements, arbitration awards or court decisions, or in any other manner consistent with national practice. See Article 6(2) of Convention No. 158 in conjunction with Article 1 of the same Convention.

<sup>277</sup> See Article 14 of Convention No. 189.

<sup>278</sup> Supra 5

<sup>279</sup> See Article 10 of the Domestic Workers Convention, 2011

## **6.6 Formation of Trade Unions for the domestic workers**

The isolation of the domestic worker and the usual absence of co-workers are some practical challenges to domestic worker's exercise of the right of freedom of association.<sup>280</sup> Obstacles to freedom of association may also exist in the legal sphere.<sup>281</sup> Forming and joining workers' or employers' organizations is a matter for the workers and employers concerned, but the State has a responsibility to protect the right of domestic workers to freedom of association.<sup>282</sup> Indeed, the realization of the right to collective bargaining requires, in the first place, the existence of workers' and employers' organizations to represent domestic workers and their employers.<sup>283</sup> The Domestic Worker Protection and Welfare Policy-2015 does not speak about formation of trade unions to represent domestic workers.<sup>284</sup> Since, the government in 2013 finally include the domestic workers as 'workers' in the Labour Law 2006 and so they easily cannot form any trade union themselves to speak up their rights.<sup>285</sup> Moreover, unlike other workers, a domestic worker may hesitate to join a union from fear of being fired.<sup>286</sup> Domestic workers are particularly vulnerable to the threats of their employers since the occupation itself is not secured as there is no guarantee of finding another job.<sup>287</sup> For live-in workers, being fired also means losing their home.<sup>288</sup>

In Bangladesh, there is a National Domestic Women Workers Union (NDWWU), known to be the first domestic workers' union of the country which started its journey on March 8, 2001 with the aim of recognizing the rights and establishing the dignity of Domestic workers.<sup>289</sup> The vision of this union is to end of slavery life of domestic workers and to liberate these workers from all kinds of exploitation and to ensure them dignified life.<sup>290</sup>

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<sup>280</sup> Supra 5 page-26

<sup>281</sup> Ibid

<sup>282</sup> Ibid

<sup>283</sup> Ibid

<sup>284</sup> See the Domestic Worker Protection and Welfare Policy-2015

<sup>285</sup> See the Bangladesh Labour (Amendment) Act, 2013 (Act No. 30 of 2013).

<sup>286</sup> Achieving decent work for domestic workers: an organizer's manual to promote ILO Convention No. 189 and build domestic workers' power International labour Office – Geneva: ILO, 2012

<sup>287</sup> Ibid

<sup>288</sup> Ibid

<sup>289</sup> International Domestic Workers' Federation: Bangladesh: National Domestic Women Workers Union (NDWWU), published on March 28, 2015. Source available at: <http://www.idwfed.org/en/affiliates/asia-pacific/national-domestic-women-workers-union>

<sup>290</sup> Ibid

The main objectives of this union is mentioned below;<sup>291</sup>

1. To establish both labour and human rights of the domestic workers through united struggle.
2. Ensuring registration & policy framing regarding appointment.
3. Ensuring livelihood & minimum wages.
4. Fixing hours of work & rest
5. Provide Skill development & Training.
6. Recognition of contribution in GDP
7. Ensuring social security

After every 2 years NDWWU holds their general assembly.<sup>292</sup> In June 2014, NDWWU and Bangladesh Labour Rights Forum (BLRF) jointly organized a national seminar where number of domestic workers and members of parliament participated.<sup>293</sup> But only one union for millions of workers are not sufficient. To expedite the formalization process, more unions should be formed at every district that may work in collaboration with NDWWU. Despite the essential and demanding nature of their job, domestic workers are usually seen as “maids of all work” who are bereft of skills and endlessly exploitable.<sup>294</sup> Trade unions have a role to play in building better public awareness to improve better working conditions, ensure labour and other human rights and thereby achieve decent work for domestic workers.<sup>295</sup> Convention No. 189, Article 3(3) states that “In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.”<sup>296</sup> Therefore, ratification of this convention would facilitate the domestic workers to form more organizations to represent these workers and build their labour and other rights more effectively.

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<sup>291</sup> Ibid

<sup>292</sup> Ibid

<sup>293</sup> Ibid

<sup>294</sup> Achieving decent work for domestic workers: an organizer’s manual to promote ILO Convention No. 189 and build domestic workers’ power International labour Office – Geneva: ILO, 2012 ISBN 978-92-2-126117-9

<sup>295</sup> Ibid

<sup>296</sup> See Article 3(3) of the Domestic Workers’ Convention, 2011

### **6.7. Ensuring other human rights standard for the domestic workers:**

Formalizing the sector of domestic work is required to ensure labor standards and as well as human rights standards for these workers. It would be illogical to talk about decent work for the domestic workers without establishing their human rights at private households where they engage themselves working for another family. By ensuring labor standards, human rights violation can also be prevented in this sector.

In this occupation, physical aggression ranging from slaps, pulling or cutting of hair, severe beatings or scalding with irons or hot water are common incidents that take place as a method of punishments by the employers. Domestic workers are probably the most exposed to sexual harassment and rape. Psychological abuse in the form of harsh insults, threats and belittlement combined with excessive demands for work are also regular form of oppression conducted by the employers.<sup>297</sup>

In Bangladesh, a report prepared by the Bangladesh Institute of Labour Studies can show some incidents that took place between 2001 to 2010.

#### **Number of reported incidents of Domestic workers- 2001-2010** <sup>298</sup>

<b>Dead by torture</b>	<b>398</b>
<b>Wounded by torture</b>	<b>299</b>
<b>Sexually Harassed &amp; Others</b>	<b>100</b>
<b>Total</b>	<b>798</b>

**Source: Bangladesh Institute of Labor Studies(BILS)**

In 2010, the High Court issued a 10-point directives to stop oppression and repression on the domestic workers, but situation has hardly changed since then.<sup>299</sup> On January 2015, Ain O Salish Kendra, (ASK), a national legal aid and human rights organization, reported that 44 acts of violence, including an attempt to rape and four deaths after physical tortures, had taken

<sup>297</sup> Supra 2 Page 24

<sup>298</sup> This report is available at: <http://idwfed.org/en/updates/bangladesh-cabinet-clears-draft-policy-to-protect-domestic-workers-rights/domestic-workers-in-bangladesh-by-dwrn.pdf>

<sup>299</sup> Supra 227

place between January to September in the year 2014.<sup>300</sup> These incidents are not often reported by the victims as most of them belong to poor and illiterate families. The main reason for which domestic household works is still part of informal economy in Bangladesh is that there is no practical application of registration system. The employers usually appoint the workers at their home without observing any formalities. Sometimes, some people act as middleman who also take commissions for bringing the workers for the employers. The Government of Bangladesh should handle this issue not only for labour related matters but also for preventing various crimes to which domestic workers are vulnerable. If these workers are registered during their appointment by their respective local authorities, then the employers will be much careful before committing such types of violence on their domestic workers.

The two core covenants of the UN are applicable for the human rights protection of every individual including the domestic workers. Also, among the eight core conventions of the ILO, Bangladesh has been a party to seven of them except the Minimum Age Convention, 1973 (No. 138).<sup>301</sup> Though the provisions of these conventions are applicable to all the workers including domestic workers, but this sector itself has been one of the most disadvantaged groups of workers in this country for which special attention is required to improve the labour and human rights standards of these workers. Although, various fields of law such as civil law, criminal law or human rights law can be applied for the protection of the domestic workers, but these cannot replace legislation more specifically addressing their working conditions, social protection and as well as human rights standards.<sup>302</sup> Article 3 of the Domestic Workers' Convention rightly emphasizes to ensure the effective promotion and protection of the human rights of all domestic workers.<sup>303</sup> Statutory entitlements provide a minimum level of protection to be enjoyed by all workers, and which are ultimately enforceable in court and the basis of formalization.

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<sup>300</sup> Ibid

<sup>301</sup> See NORMLEX: Information System on International Labour Standards, Ratifications of Bangladesh.

<sup>302</sup> Effective protection for domestic workers: a guide to designing labour laws / International Labour Office, Conditions of Work and Employment Programme, Industrial and Employment Relations Department – Geneva: ILO, 2012. ISBN 978-92-2-125275-7, page 2

<sup>303</sup> See Article 3 of The Domestic Workers' Convention, 2011

### **6.8 Enactment of new comprehensive law:**

In Bangladesh, formalization of domestic workers is also important for specific legislation and regulatory framework which are the essential tools for eliminating the negative aspects of informality in the domestic work sector and simultaneously to ensure decent work and employment.<sup>304</sup> To begin the process of formalization, now, the vital task for Bangladesh government would be to enact a comprehensive law that will cover every aspects relating to the domestic workers to bring this sector under formal economy. Such act is required for and set minimum standards for wages, hours and days of rest, casual or sick leaves and other benefits for domestic workers, along with social security and the protection of domestic workers against all forms of abuses at the place of their work. In this regard, Bangladesh government may follow the measures taken by the Philippines by adopting a comprehensive law in the model of Batas Kasambahay (The Domestic Workers Act) following the ratification of the ILO's Convention no 189. which is a milestone for protecting labour and other human rights legislation for all the domestic workers in the Philippines.

### **6.9 Labour Inspection and compliance mechanism at domestic work:**

There are challenges as regard to compliance in the domestic work sector since the work place in this occupation is mainly private households. This is one of the main reasons for which most of the employers would be reluctant to go through the inspection process which is habitually to be taken place at home. Domestic Workers Rights Network (DWRN) member secretary Nazma Begum said that "there is no law and inspection system for domestic workers for which so these workers face trouble, but a law and an inspection system can change the scenario."<sup>305</sup> However, There can be some alternative ways to labour inspection at domestic work. In such situation, formalization process would cooperate the government to take measures by arranging reporting system at local level for compliance of the related legislation.

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<sup>304</sup> ILO: Extending the scope of application of labour laws to the informal economy: Digest of comments of the ILO's supervisory bodies related to the informal economy (Geneva, 2010), pp. 68–69.

<sup>305</sup> Supra 227, International Domestic Workers Federation: Bangladesh: Cries of domestic workers still go unheard

### **6.10 Adoption of International standards for the domestic workers:**

In Bangladesh, it is not unrealistic to demand the ratification of the Domestic Workers Convention, 2011 along with Recommendation 201 concerning Decent work for domestic workers more than 2 million domestic workers who are engaged at this occupation in private households. Without existence of international standards, it will be more challenging for the government to move a sector to a formal economy. Moreover, adoption of International standards for these workers would help the government to impose the employers their legal obligations and gradually ensure these workers better conditions of work along with the other human rights which these workers are legally entitled. However, it does not mean the government is under an obligation to ratify the convention immediately. Since these workers are huge in number, therefore, the government can take plans and programmes to prepare itself to ratify this convention. Before a State can ratify, accede to, approve or accept a convention in accordance with the provisions of that convention, it has to complete the necessary procedures at the national level. As mentioned earlier, Indian Government has not yet ratified ILO Convention No.189 on Decent Work for Domestic Workers since Indian Government only ratifies a Convention when the national laws and practices are brought fully into conformity with the provisions of the Convention in question. This statement itself has an indication as to why Indian government has already started the process of formalization. The same can be followed by Bangladesh Government as well by bringing the national laws and practices in conformity with the provisions of the convention.

The fact that domestic work is still a part of informal economy in Bangladesh is due to its particular nature of work. It is an occupation which is performed at private houses. Since, these workers form a large part of this informal sector in Bangladesh, therefore, these workers should be brought under the formal economy for rapid development the country.

## Chapter 7

### Recommendations and Conclusions

Domestic workers are employed by private households to carry out household chores and care work and contribute by way of their labour and skills to sustaining employer households.<sup>306</sup> Bangladesh is a densely populated country where informal economy plays a significant role in the labour market. Domestic work is known to be a common phenomenon in Bangladesh. Appointing domestic workers is socially and culturally accepted in Bangladeshi society. However, many of them live and work under conditions that is equivalent to slavery system. Most of the middle class families are engaged in service for which they get dependent on paid workers to look after their houses. Due to non-availability of day care centres in Bangladesh, working parents of the children have to appoint domestic workers to take care of their children. Also, people in their old age need the domestic workers to assist them in household chores. As a result, these families habitually seek domestic workers for their assistance with a very low wage. Therefore, inclusion of domestic workers in the labour law may seem to be a difficult step apparently, but the same is not unrealistic in the perspective of Bangladesh. For this, the first thing is required is the will of the Government to become determined to bring this sector under formal economy which would help a major part of informal segment to turn into a formal one.

Initially, the Government of Bangladesh can create public awareness raising campaigns with effective collaboration of NGOs to educate both workers and the employers about the disadvantages of informal segment of economy and also to make them aware of their rights and duties. Then the government can deal with the sector of domestic workers. This may be a time consuming process as it involves private families but it is possible if this matter is directly handled by the government. It has already been mentioned how the Government of the Philippines including President Benigno Aquino has been personally involved in supporting and promoting the Batas Kasambahay and the Convention 189 along with the Department of Labour and Employment to raise awareness regarding the ratification of the ILO Convention and the speedy passage of the bill.<sup>307</sup>

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<sup>306</sup> Supra 12, Page-50

<sup>307</sup> Ibid Page-27

To implement decent work for domestic workers, it is highly necessary that the occupation itself be respected by mass people. Most of the domestic workers in Bangladesh are illiterate, but from their minimum knowledge and common sense, they perceive a feeling that being a domestic employee is not considered to be decent work. The reason is that conventionally most of the employers' attitude towards their domestic workers are such as if they have been vested with full authority over the domestic workers. This may be the result of not including this group in the formal labour law of the country for many years. But this notion has to be changed immediately. Educating children can be a good starting point too in the perspective of Bangladesh. Mass media and social networking systems can be used as strong platforms for creating awareness in the families. A good lesson can be taken from Batas kasambahay of the Philippines where the term "household helper" is preferably used for the domestic workers instead of other less respectful terms for them.<sup>308</sup> For the domestic workers in Bangladesh, it would also be essential to replace the traditional names that are usually used to lower the status of the workers in the society for time immemorial. Promoting a new vision to recognize this sector as 'decent work' may bring change in the mind-set of the people.

Local governments of Bangladesh in every district may also contribute in the process of formalization. Bangladesh has 64 administrative districts and comprising of strong rural councils, or union parishads, and urban municipalities.<sup>309</sup> Like in the Philippines, Local governments can be vested with the tasks to register and provide programs for domestic workers both in the cities and rural areas of Bangladesh.

As regard to the inspection process, again the municipal corporations in metropolitan area and union councils in rural level can be empowered to make arrangements for reporting system to evaluate the performance of the employers whether they are complying with labour standards or not. This will create much flexibility in converting the system into formal economy without less hesitation on part of the employers.

There must be scopes to form trade unions for domestic workers for their advancement and they should be given instruction regarding functions of trade unions. These trade unions can play vital role in creating awareness as regard to both labour and human rights standards of the domestic workers which they are entitled to. Therefore, the government should take steps to institutionalize the trade union organizations for domestic workers in Bangladesh.

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<sup>308</sup> Supra 12

<sup>309</sup> The Local Government System in Bangladesh, Country Profile: Bangladesh, Local government information correct as of 2009

Child domestic workers are more vulnerable to abuses. Long termed policies and programmes can minimize numerous problems relating to children. Bangladesh Government may resume arrangements like FFE program and take other necessary steps to increase the income of the parents that will prevent them to send their children to work at private households and reduce dropout rates from the school which is the basis of sustainable developments.

Finally, enactment of a comprehensive law followed by the ratification of the Domestic Workers' convention, 2011 is required since this process can be deemed to be the culminating point of formalization through which some certain international standards for these workers can firmly established and cannot be altered further with the change of the government in a country like Bangladesh.

Formalization of the sector of domestic work by bringing the domestic workers under the coverage of legal framework will gradually implement better conditions of work, fundamental principles, rights, social protection and institutionalization of unions of domestic workers and thereby contribute to the development process in Bangladesh. Undoubtedly, country's gross domestic product (GDP) and income would be increased if the domestic labour is brought under legal structure. As a member state of the ILO, Bangladesh need to take immediate measures to provide all the domestic workers with the basic elements of protection which would assure them a minimum standard of living that is integral to lead a dignified life and thereby contribute to promote decent work for all the workers including the domestic workers which is one of the Sustainable Development Goals (SDGs) of the ILO. If the measures which are being taken at national levels in other countries can be analysed by the Government of Bangladesh, then it can be said that decent work for domestic workers is no longer an impossible vision for this country.

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