



HUMAN RIGHTS analysis

LAW week



# Domestic Helps: Are they protected?

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**E**XTRME poverty, separation and divorce of wife make women helpless. In search of livelihood they are compelled to migrate in the city with their children. Most of them become labourers as well as domestic helps. They prefer urban areas than rural ones because of attraction to city life and desire to earn more money. Domestic workers are neglected. As it is an unorganized or informal sector so they are not given the recognition that workers of the formal sector are given.

There is no national statistics on domestic workers. But according to the Baseline Survey on Child domestic Labour (CDL) in Bangladesh conducted by International Labour Organization in the year 2006 it reveals that there are approximately two million domestic workers in Bangladesh, of which 12.7 percent are child domestic workers. The number of child domestic workers in Bangladesh is 421,426, of which 147,943 work in Dhaka city alone and the remainders (273,543) work in other urban and rural households. Of the CDWs, 78 percent are females and 94 percent work full-time.

### Definition of domestic workers

Domestic worker means residential helping hands in consideration of wages. The workers mainly come from rural areas with extreme poverty background. A large number of them are minors and majority of them are women and girls. Domestic workers are identified as *bandha* (tied down), *chhuta* (non-bound) and *pichchis* (tiny ones). Depending on this category their works are assigned by their employers.

### Assigned works

Domestic worker plays an important role in household duties. The assigned works of domestic workers are washing clothes, cleaning the house, washing kitchen and its utensils, cooking and grinding spice, looking after small children and keeping them company, running numerous errands for various family members and helping her mistress in all her household chores. Having finished their assigned works they are provided with message services, combing and plucking grey hair, cleaning lice etc.

### Findings of a survey

In 2006, Bangladesh Institute of Labour Studies (BILS) conducted a survey on domestic workers in Dhaka City. It is found that 50% workers are between the age limit of 05-15 years and 76.67% are female. Amongst them 46.67% identified poverty as a major cause to choose such a job, whilst lack education and unskilled in any job also forced them to opt for the job. It is a matter of regret that though the domestic workers are very low paid they are forced to work longer hours. 46.67% domestic workers work 11-12 hours but their average wage is

TK.509.6. According to 50% workers their wage range is TK.301-600. 60% workers get their wages in regular basis and 40% get irregularly. They have no separate room for sleeping. The survey disclosed that 40% domestic workers sleep at the drawing room or on the floor of bed room, 33.33% at kitchen, 16.67% at veranda, and 3.33% at store room. Only 6.67% sleep at separate room. Domestic workers do not enjoy any regular holidays or any days off during the week.

### The Domestic Servants' Registration Ordinance 1961

Domestic workers are the victims of an unjust society. But there is no legislation to protect this distressed segment. The East Pakistan Domestic Servants Registration Ordinance, 1961 was promulgated providing for registration of domestic servants. It extends to some specific areas of Dhaka City. The term domestic servant means every person who renders domestic services to his employer in lieu of wages or any other consideration. According to section 3 of the Ordinance, if a person takes employment as a domestic servant, he has to report for registration to the officer-in-charge of the police-station or any other police officer. The police officer will not be below the rank of an Assistant Sub-Inspector of police and shall be authorized by the officer-in-charge. Name, address or addresses, a copy of his own photograph in duplicate, finger impression and measurements are necessary requirements for registration. Enquiries will be conducted by the officer-in-charge of the police station or the authorized officer about the correctness of the particulars.

After being satisfied about the correctness of the particulars, the officer in charge of the police station or the authorized officer shall issue a registration card containing a photograph on it. According to section 4 of the Ordinance, no person shall work as a domestic servant without registration card. Section 6 of the Ordinance provides for penalty. According to the section, violation of the provisions is punishable with simple imprisonment which may extend to one month or with fine which may extend to one hundred taka or with both.

### Drawbacks of the Ordinance

From the above discussion it is clear that the Ordinance was passed only for the registration of domestic workers in Dhaka City. In this Ordinance, police reserves absolute power and authority of issuing registration card. In our country the police are not friendly with the ordinary people specially domestic helps. So they do not dare to go to the police station normally. According to the Ordinance, anytime a domestic worker moves out of a house in search of a new job he would require reporting again and again to the nearest police station. It is evident that 50% domestic helps are children.



But the Ordinance has totally ignored this majority portion of workers.

The Ordinance provides for registration only to the domestic helps and there is no such provisions for the employers for similar registration which needs to be incorporated in the said Ordinance. If this is provided there will be scope for safety or lesser cruelty of the domestic helps. It will also be helpful to identify the violators of this Ordinance as well as the offenders.

### Constitutional provisions

Though the Constitution of the Peoples Republic of Bangladesh has guaranteed the equal rights of all citizens but the reality is different. According to Article 14, to emancipate the peasants, workers and backward sections of the people from all kinds of exploitation are the fundamental duties of the State. Article 15 has said that providing food, clothing, shelter, education and medical care, ensuring right to work, rest, recreation, leisure and social security are the fundamental responsibilities of the State. Article 17 gives guarantee for removing illiteracy from the country by free and compulsory education. According to the Article 28(4), the State will make special provision in favour of women and children. Forced labour is prohibited and considered as a punishable offence by Article 34 of the Constitution. If we look at the domestic workers it is easy to comprehend that how far the Article have achieved their objectives.

### Recommendations

Domestic helps are not to be recognized as labourers. So they should be included in the national statistics and be recognized as labourers. Their wages should be fixed considering

their working hours and working hours should be fixed considering their age. The age limit of a domestic help should be determined consisting to the Bangladesh Labour Act, 2006. Attempt should be taken for the provisions of education and holiday. At least one hour for education and holiday for once in a year. There is no agreement for employing a domestic help. So the duration of their employment absolutely depends on the whims of their masters. As a result they may be discharged at any time. Employers' attitude towards domestic helps should be changed. Attempt should be taken for the awareness of the mass people regarding to their miseries and to treat them justly. Emphasis should be given to protect the basic rights as well as human rights of domestic servants.

### Conclusion

As there is no regulation mentioning the minimum age, recruitment, ensuring minimum wage and congenial working conditions there is scope for harassment of the domestic helps. Hence, it is strongly recommended that the domestic helps should be included in the Bangladesh Labour Act, 2006 to address these issues or the Government may consider introducing a new law to meet these above requirements. As well the Domestic Servants' Registration Ordinance should be amended to protect the interests of the innocent domestic helps and to punish the cruel employers. Above all, importance should be given to execute the law because it would remain paper-tiger without proper execution.

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LAW lexicon

**Bankruptcy Judge** - The judge who determines whether a debtor is entitled to a discharge in bankruptcy.

**Bankruptcy law** - The area of federal law dealing with the handling of bankrupt persons or businesses.

**Bar** - 1. Historically, the partition separating the general public from the space occupied by the judges, lawyers, and other participants in a trial. 2. More commonly, the term means the who body of lawyers.

**Bar examination** - A state examination taken by prospective lawyers in order to be admitted and licensed to practice law.

**Battery** - A beating, or wrongful physical violence. The actual threat to use force is an "assault;" the use of it is a battery, which usually includes an assault.

Source: Jurist International.

LAW amusements

Surreal law facts

The truth is always stranger than fiction.

12-year old daughter vs. father

Justice Suzanne Tessier is a rookie judge, appointed in June 2007, but one who takes her parents patriaee responsibilities to heart.

In a family law case before her in 2008, the judge heard evidence that a 12-year old daughter had defied her father's house rules and his express order to stay off the Internet. In the result, it was his wise decision to ground his daughter and cancel her participation in a three-days school trip.

But this child had a secret weapon.

She had been appointed a child advocate as part of her parent's custody dispute and she got her lawyer excited about her rights.

The child became plaintiff and asked the Court to review her punishment.

That's when just plain silly became outright asinine when the judge empowered the girl's defiance of parental authority, and cancelled the father's punishment, ruling that it was excessive.

Beaudoin's client appealed the decision to the Quebec Court of Appeal, which as of April 4, 2009, had still not entered a decision.

Young offender whisperer

New York City social worker Julio Diaz was just getting off the subway station #6 when he was mugged by a knife-wielding young man. Diaz handed over his wallet.

That's where a normal robbery turned bizarre.

Rather than dial 911 on his cell phone, Diaz called to the retreating teenager and offered his coat. The offender stopped and looked back cautiously but accepted.

Diaz continued to talk to him, eventually inviting him to have something to eat.

When the bill came, Diaz suggested he use his wallet to pay. He promptly returned the wallet back to Diaz.

Diaz pressed on, and asked the teen for his knife. Again, the young offender turned it over and left the restaurant.

Caution to readers: don't try this at home.

Source: www.duhaime.org

HUMAN RIGHTS monitor

## Malaysia: Effort to improve current immigration regime

**T**HE Equal Rights Trust (ERT) has called on the government of Malaysia to grant legal residency to the estimated 30,000 stateless Rohingya refugees currently living in the country. In its report, *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, ERT praises the government for the recent steps it has taken to improve the immigration regime but urges it to go further, reversing the current policy which treats the Rohingya as illegal migrants.

In the report, ERT provides first hand testimony from Rohingya who have been subjected to arbitrary arrest, detention, violence, extortion, human trafficking and forced labour in Malaysia. The report reveals for the first time the patterns of movement by Rohingya across South East Asia, providing an unprecedented insight into the cycle of flight, detention and deportation which affects tens of thousands of Rohingya in the region. According to the ERT findings:

- An estimated 25-32,000 Rohingya live in Malaysia and between 90 and 115 Rohingya are in detention in Malaysia at any one time;
- A combination of factors including common religion, economic prosperity and the chance to acquire even basic identity documents draw thousands of Rohingya to Malaysia, despite the fact that they remain under constant threat of arrest, detention and deportation;
- Rohingya arrested in Malaysia are often detained for months in inadequate conditions with little access to healthcare. Those convicted of immigration offences can face up to 4 months imprisonment and corporal punishment, which is still a legal penalty in Malaysia;
- Until recently, Malaysian immigration officials routinely sold deportees to human traffickers at the Thai-Malay border, who then either demanded payment from victims' families to release them and transport them illegally back to Malaysia, or re-sold them as bonded labourers on fishing boats or in plantations.



The report calls on the Malaysian government to recognise the unique status of the Rohingya as stateless refugees and to formalise their position as residents in Malaysia. In addition, it recommends that the government:

- Investigate the conduct of Malaysian immigration officials in respect of the Rohingya;
  - Establish procedures for determining refugee status and statelessness;
  - Cease detention of Rohingya and other refugees in cases where deportation is not possible;
  - Institute a formal policy to minimise deportation of Rohingya to Thailand; and
  - Ban the use of 'caning' as a punishment, including against immigration detainees.
- Speaking about the report, the ERT's Executive Director, Dimitrina Petrova said: "A year ago, the world watched as over 1,000 Rohingya refugees were towed out to sea and abandoned by the Thai government, leaving over

500 to die. Our report reveals that incidents such as this merely hint at the true scale of a long-standing, widespread problem affecting the whole South East Asia region."

"Stripped of their nationality and persecuted in Myanmar, many Rohingya soon find themselves trapped in a cycle of flight, making their way to countries like Malaysia, only to be arrested, imprisoned and deported" - Petrova alleged. Yet despite this, the steady stream of people making their way to Malaysia shows no sign of abating: the government's programme of arrest, detention and punishment is not an effective deterrent.

Petrova said "we welcome the recent improvements in the situation, but urge the government to recognise the reality of the Rohingya's plight and grant them residency and the right to live in Malaysia and enjoy fundamental rights on an equal basis with others."

Source: Equal Rights Trust.

## Nat'l strategy be drawn up for oil, gas exploration

An appropriate national strategy should be devised for exploration of the country's mineral resources including oil and gas, barrister Abdur Razzak told the High Court. He was placing arguments before the HC during the second day's hearing on the writ petition challenging the government move to sign production-sharing contracts (PSC) with foreign companies for gas and oil exploration in onshore blocks. The hearing is taking place following a government move in December last year to lift an HC injunction on onshore oil and gas exploration that led to suspension of all new PSC-based explorations since 2001. - *The Daily Star, January 7, 2010.*

## Tender documents snatched, bidders beaten up

Criminals beat up officials of two companies, who went to bid for a tender at Dhaka Power Distribution Company office at Paribagh, and got away with their bid documents. Sources claimed the incident happened before inactive policemen. The Dhaka Power Distribution Company authorities cancelled the tender in an emergency meeting while official of Prime Power International, Abul Kashem, filed a general diary with Shahbagh Police Station in connection with the snatching. Police and sources said yesterday was the last day for bidding for the work order worth Tk 65 lakh. The job was to repair and maintain transformers for one year. - *The Daily Star, January 7, 2010.*

## Bismillah' and Islam as state religion to stay

The words "Bismillah-Ar-Rahman-Ar-Rahim" in the preamble to the constitution and declaration of Islam as state religion will remain as they are, since they reflect the beliefs of the people, Prime Minister Sheikh Hasina said. She was meeting 14-party leaders at her official residence Jamuna. It was the first such meeting since the Awami League-led grand alliance came to office in January last year. Hasina, also president of AL and chief of the 14-party combine, however said the spirit of the original constitution would be restored with inclusion of the High Court verdict that declared illegal the fifth amendment, said meeting sources. - *The Daily Star, January 6, 2010.*

## HC hearing on writ against PSC starts

The High Court started hearing a 12-year-old writ petition that challenged the government move to sign production-sharing contracts (PSCs) with foreign gas and oil exploration companies. Former secretary Shah Abdul Hannan, columnist Sadek Khan, journalist Amanullah Kabir, and Prof Abdur Rob jointly filed the writ petition with the High Court (HC) as public interest litigation in 1998. Following the petition, the HC in 2001 issued an injunction on oil and gas exploration from the onshore blocks of the country. During the hearing petitioners' counsel barrister Abdur Razzak told the court that the mineral resources couldn't be exported without appropriate national policy. - *The Daily Star, January 6, 2010.*

## Religion-based parties face ban

Religion based politics will be banned if cancellation of the fifth amendment to the country's constitution is finalised by the Supreme Court (SC), said the law minister.

But he added that the words Bismillah-Ar-Rahman-Ar-Rahim in the preamble of the constitution and its declaration of Islam as the state religion will remain intact. He said Islam was made the state religion through the eighth amendment, and the High Court (HC) in its verdict did not say anything about the words Bismillah-Ar-Rahman-Ar-Rahim. He also said the words are a part of the constitution's preamble, not of its main body. - *The Daily Star, January 5, 2010.*

## Khaleda's birthday case sent to CJ

A High Court bench sent a case to the chief justice for a decision regarding celebration of BNP Chairperson Khaleda Zia's birth anniversary on August 15. The HC bench of Justice Md Momtazuddin Ahmed, however, rejected a petition filed by Khaleda apprehending that she will not get justice from the bench and sent the case to the chief justice for a decision. Advocate Md Sohrwardy had filed a case on August 20, 1997, with an assistant judge's court in Dhaka seeking an injunction so that Khaleda cannot celebrate her birth anniversary on August 15. Khaleda on September 16, 1999 filed a revision petition with the HC challenging the legality of the proceedings of the case filed by Sohrwardy. - *The Daily Star, January 5, 2010.*

## Death warrants issued for 5

A Dhaka court issued death warrants against five convicted killers of Bangabandhu Sheikh Mujibur Rahman. Judge Md Abdul Gafur of the District and Sessions Judge's Court issued the warrants. The court sent the death warrants in a red envelop to the senior jail super of Dhaka Central Jail directing him to take necessary steps to officially inform the confirmation of death penalty to the five convicts in the prison. Meantime, Inspector General (prisons) Brigadier General Ashraful Islam Khan told The Daily Star that he received the death warrants and the convicts were informed about the warrants. - *The Daily Star, January 4, 2010.*

## Law Commission left out of focus

Although the law commission has not received any government response to its two-year scheme for legal and judicial reforms, it started working as per the plan. Commission Chairman Justice MA Rashid told The Daily Star that despite some shortcomings the commission has started working according to the work plan with a view to modernising the legal system and updating some old laws. The reconstituted body of the commission drew up the 15-point work plan on December 17 last year. The plan includes some reforms of the laws on the family affairs, the police, the prisons and the contempt of courts. - *The Daily Star, January 4, 2010.*

## Contempt charge against govt

A contempt of court notice was served on the government yesterday for not constituting a national river protection commission according to the High Court verdict in order to protect and preserve the country's rivers. The notice also asked the government to constitute the commission consisting of experts concerned within next seven days. The judgment was delivered upon a public interest writ petition filed by the Human Rights and Peace for Bangladesh (HRPB). - *The Daily Star, January 3, 2010.*

## JS body caught in dilemma

The parliamentary standing committee on law, justice and parliamentary affairs might shelve its plan to look into the process of granting presidential mercy to a BNP leader convicted in a double murder case to avoid discussion on another clemency by the present government. Jhinto, a BNP leader, was sentenced to death 22 years ago in a double murder case but the other convict in the same case had been executed before Jhinto was pardoned by then president Iajuddin Ahmed. The presidential clemency at that time triggered widespread criticism. - *The Daily Star, January 3, 2010.*

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