RIGHTS ADVOCACY

The everyday plight of DOMESTIC WORKERS

In the case of BNWLA v The Cabinet Division (2011), the High Court Division of the Supreme Court of Bangladesh gave directions to the government to include 'domestic workers' within the definition of worker in the Bangladesh Labour Act 2006.

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According to the Bangladesh Institute of Labour Studies (BILS) around 20 lakh workers are engaged in domestic work. Despite their honest work and contribution, they are one of the most vulnerable and victimised groups in Bangladesh. Moreover, they get little attention in our policy-legal talks too. Indeed, with the tragic death of Preeti Urang at the house of Syed Ashraful Haque, the now-terminated executive editor of The Daily Star brought the issue to the forefront.

The domestic workers suffer from an array of issues in Bangladesh, including but not limited to rape, sexual harassment, physical and emotional torture, lack of job security, low or no wages, deprivation of basic necessities, etc. In fact, according to a study by the BILS published in May 2021, more than half of the live-in domestic workers have encountered some form of harassment at their workplace.

Some would argue that the main reason behind this grim reality is the classist mindset that was instilled in us by the British during the 200 years of colonial rule. Others would blame the very nature of such work and the power imbalance between the employer and the domestic worker. While both of these may be contributing factors, the author believes that a primary reason behind the problem is the lack of sufficient political will to solve the problem and the lack of an effective legal framework relating to the rights of domestic workers.

The first point to clarify on this matter is that even though we have a labour law to protect the workers, namely, the Bangladesh Labour Act 2006 (BLA), it does not encompass domestic workers. Section 1(4)(Na) of the Act excludes house helps from the ambit of the law. As such, they are by default deprived of a wide range of labour rights such as a fixed working hours or minimum wage like other workers. In the case of *BNWLA v The Cabinet Division* (2011), the High Court Division of the Supreme Court of Bangladesh gave directions to the government to include 'domestic workers' within the definition of worker in the BLA.

The court gave multiple directions to the Government, in addition to the abovementioned one, including, prohibiting the employment of children below the age of 12 in any type of work, ensuring the monitoring and prosecution of the perpetrators in cases of violence against domestic workers, ensuring mandatory registration of domestic workers, promulgating law making it mandatory for employers to ensure health checkups of the domestic workers at least once in every two months, etc. Needless to say, any steps taken by the government fell short of what was required in this regard.

Firstly, domestic workers have not been included in the definition of workers in the BLA as of yet. A policy named Domestic Workers Protection and Welfare Policy 2015 has been adopted but since it is not a law but merely a Policy, legal actions cannot be brought against employers for its violations. Moreover, the Policy, too, compromises the welfare of the domestic workers in multiple places. For instance, paragraph 7.1 does not specify any minimum wage for domestic workers enabling exploitive employers to take advantage of the same. Paragraph 7.4 does not specify the maximum work hours for domestic workers. Rather it keeps it vague which does little to nothing to address the problem of overwork that the domestic workers usually face. Adding to it, according to the study done by BILS, only 14% of the domestic workers even heard about the Policy and almost no employer knew about it. This suggests that the government did not do the needful to raise awareness on the Policy.

However, the Policy has a few commendable aspects as well. For instance, paragraph 7.10 gives the responsibility to the government to ensure fair justice under the existing laws in case of any harassment or torture of the domestic worker. In addition, the minimum age for employment has been made at par with the BLA under paragraph 7.2.

Now, it may be important to mention here that even though there is no special law protecting the rights of domestic workers specifically, some extreme instances of violations of rights that we see around us can be remedied by the existing laws of the country. Acts of rape or sexual harassment against women and children have been sanctioned under sections 9, 10 of the Nari o Shishu Nirjatan Daman Ain 2000, sections 354, 375 of the Penal Code 1860. Acts amounting to hurt or grievous hurt have been penalised in the Code under sections 319-338A. However, a lot of other acts like compelling to work for long hours or not having any fixed minimum wage have no remedies or safeguards.

Bangladesh has not yet ratified the Domestic Workers Convention 2011. Despite that, its constitutional obligations alone are sufficient to argue that the government needs to take measures to protect the rights of domestic workers as soon as possible. Conversations surrounding rights of the domestic workers should not surface only when something sensational takes place.

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GLOBAL LAW UPDATES

ICC ARREST WARRANT

Is it permissible to arrest the Head of a State?

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On May 20, 2024, the chief prosecutor of the International Criminal Court (ICC), Karim Khan, announced that he would seek issuance of arrest warrants against the Israeli Prime Minister Benjamin Netanyahu and the Israeli Minister of Defence, Yoav Gallant along with three senior Hamas officials. This would not be the first instance, that the ICC would issue a warrant of arrest against a head of a state. Last year, the ICC issued arrest warrants against Vladimir Putin, the President of Russia, and Maria Lvova-Belova, Russian Commissioner for Children's Rights, for war crimes committed during the war against Ukraine.

While ICC has the mandate to try individuals, regardless of the position they hold, for alleged commission of international crimes such as genocide, crimes against humanity, war crimes etc, the arrest of such individuals has been an issue of debate. Article 58 of the Rome Statute of the ICC allows a Pre-Trial Chamber on the application of the Prosecutor to issue a warrant of arrest against a person, if it is satisfied that: (a) there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and (b) the arrest of the person appears necessary. Article 59 further puts obligation upon a state party which has received a request for arrest to immediately take steps to arrest the person in question in accordance with its laws. If the state does not allow interim release on urgent and exceptional circumstances, it is obligated to deliver the person to the Court as soon as possible.

Head of States enjoy immunity from criminal jurisdiction in their state as well as in foreign lands. The International Court of Justice (ICJ) in the *Case Concerning the Arrest Warrant of 11 April 2000* (*Democratic Republic of the Congo v Belgium*), found that an arrest warrant issued by Belgium against the Minister of Foreign Affairs of the Democratic Republic of the Congo, failed to respect the immunity from criminal jurisdiction that the incumbent minister enjoyed under customary international law and that the immunity was absolute in nature. However, ICC has in its practice, departed from this view.

A pre-trial chamber of ICC issued an arrest warrant against Omar al-Bashir, then reigning president of Sudan on 4 March 2009, indicting him on five counts of crimes against humanity and two counts of war crimes, directed against the civilians of Darfur. A second arrest warrant was issued later on 12 July 2010, adding 3 counts of genocide. He was the first sitting head of state ever to be indicted by the ICC.

Sudan was not a state party to the Rome Statute establishing the ICC and thus claimed that it did not have to execute the warrant. However, United Nations Security Council Resolution 1593 referred Sudan to the ICC, which gave ICC jurisdiction over international crimes committed in Sudan and obligated its government to cooperate with the ICC. Following the indictment, al-Bashir visited several countries in Asia, Europe and Africa, all of which refused to arrest him. In 2015, during a visit to South Africa for an African Union (AU) meeting, a South African court prohibited al-Bashir from leaving the country, while it deliberated whether to hand him over to the ICC. He was later allowed to leave.

In 2017, Pre-Trial Chamber II of the ICC addressed South Africa's failure to arrest and transfer al-Bashir to the Court under Article 87(7) of the ICC Statute. South Africa contended that it did not have a duty to arrest al-Bashir, since he enjoyed immunity under customary international law as well as the Host Agreement between South Africa and the AU for the purposes of the 2015 AU Summit, which granted immunity to certain members of the AU Commission. The Pre-Trial chamber first stated that al-Bashir attended the summit as the Head of State of Sudan, not as a member of the AU Commission. Regarding immunity under customary international law, the Chamber found that no rule under customary international law excludes the immunity of Heads of State when their arrest is sought by an international court such as the ICC. It added that the consideration in this case was not whether such immunity would bar the Court from exercising its jurisdiction, but whether South Africa had a duty to arrest al-Bashir. The Chamber stressed that if the drafters of the Statute wished to exclude the immunity of Heads of State from the Court's jurisdiction but not from arrest by a State Party, they would have expressly done so.

The same Pre-Trial Chamber in 2017, regarding Jordan's refusal to arrest and transfer al-Bashir to the ICC, after he attended an Arab League Summit in Jordan in March 2017, found that Jordan was under a "clear and unambiguous obligation" to arrest al-Bashir. On this occasion, the Chamber even went on to refer Jordan's non-compliance to the Assembly of State Parties of the ICC and the Security Council.

It is the political will of the States to co-operate with the ICC and comply with an arrest warrant. ICC may deal with failure to co-operate, including through referral to the Assembly of State Parties and the Security Council. The Security Council may impose sanctions on a country for its non co-operation as well. However, even the imposition of such sanctions would depend on the political will of the Permanent members of the Security Council.

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