



Study Report on Regulating the Unregulated Domestic Works by Children

**Submitted to
National Human Rights Commission, Bangladesh**

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List of Acronyms

ADB	Asian Development Bank
BBS	Bangladesh Bureau of Statistics
BLD	Bangladesh Legal Decisions
DLR	Dhaka Law Reports
HCD	High Court Division
ILO	International Labour Organization
NGO	Non-Government Organization
SC	Supreme Court
UNICEF	United Nations Children's Fund
UNTS	United Nations Treaty Collection

Abstract

Because of their vulnerability, children have always received special attention and protection of the human rights regime as well as national legal instruments. However, children employed in domestic work are not directly covered as regards their living and working conditions by any national legal or policy instruments in force in Bangladesh. This study report briefly reviews the international legal regime on the protection of the child domestic workers. It thoroughly sifts through the national legislations and policy instruments crafted by the Government for the protection of children and on the basis of this, the study finds that regulation on the working and living conditions of child domestic workers is almost non-existent in Bangladesh. This report makes some recommendations that the policy makers in Bangladesh may consider for improving the appalling situation of the child domestic workers.

Regulating the Unregulated Domestic Works by Children

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Background:

As a vulnerable group, children are entitled to special rights and care and such entitlements are guaranteed in major international human rights instruments such as the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, 1966 and the *International Covenant on Economic, Social and Cultural Rights*, 1966.¹ It would appear that the Government of Bangladesh is acutely aware of its international legal obligations regarding the protection and promotion of the rights of children as enshrined in these instruments. Hence, following the independence of Bangladesh, the *Children Act*, 1974² was passed and subsequently the *National Children Policy*, 1994 was adopted and the *National Action Plan for Children 2005-2010* was taken up. A number of policies adopted in the recent past such as the *National Child Labour Elimination Policy*, 2010, and the *National Children Policy*, 2011 would also bear testament to the Government's recognition of the need for upholding the rights of children.

However, if we scratch beneath the surface, we would easily find that despite a plethora of policies designed to protect the rights of children, these rights are often neglected in Bangladesh. As an economically backward country, Bangladesh has

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¹ See *Universal Declaration on Human Rights*, 1948, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948), Article 25(2); the *International Covenant on Civil and Political Rights*, 1966 opened for signature 16th December 1966, 999 UNTS 171 (entered into force 23rd March, 1976) Article 24(1); and the *International Covenant on Economic, Social and Cultural Rights*, 1966 opened for signature 16th December 1966, 993 UNTS 3 (entered into force 3rd January 1976) Article 10.

² Act No. XXXIX of 1974 (repealed by Act No. 24 of 2013), for a comprehensive analysis of the Act, see Shahdeen Malik, *The Children Act, 1974: A Critical Commentary* (Dhaka: Save the Children UK, 2004).

undeniable constraints of resources. Abject poverty in a significant section of the population and sometimes lack of adequate social safety net for those children who have to fend for themselves mean that a considerable number of children are employed as child workers.³ It is common knowledge that children in Bangladesh are employed in a diverse array of works ranging from light, part-time works to hazardous, full time works or even at extremes, works which would in reality tantamount to servitude.

Children working in the manufacturing sector have grabbed the attention of the local and international community and consequently, their working conditions have been subjected to a more or less well defined legal regime. In some industries such as the ready-made garment manufacturing child labour is almost but non-existent because of the stringent regulations, pressure from and vigilance of the overseas buyers of the products.⁴ However, the plight of domestic workers⁵ who are mostly children⁶ have attracted relatively less attention and quite naturally been subjected to little or no legal restrictions. This is not just the trend in Bangladesh but can also be found in many other parts of the

³ Referring to *National Child Labour Survey 2002-2003*, conducted by Bangladesh Bureau of Statistics (BBS), *National Plan of Action for Implementing the National Child Labour Elimination Policy 2012-2016* (April 2013), prepared by the Ministry of Labour and Employment of the Government of Bangladesh notes that around 7.4 million are economically active and around 3.2 million of them were engaged in some form of employment [National Plan of Action 2012-2016].

⁴ The merits of special attention on child labour in a particular industry (except when the industry involves hazardous works) is questionable, see below note 104 and the accompanying text.

⁵ Following Article 1 of the *Convention concerning Decent Work for Domestic Workers*, 2011 (Convention No. 189) of the ILO, the term domestic worker may be used to refer to the works performed by workers in or for a household or households. Similarly, para 2.1 of the *National Domestic Worker Protection and Welfare Policy*, 2010 (Draft) includes all works performed in households by workers as domestic works except those that are related to the business of the employer or related to profit making by the employer [Draft Domestic Worker Policy, 2010].

⁶ Referring to *National Labour Force Survey 2006*, conducted by BBS, the Draft Domestic Worker Policy, 2010 note that around 331,000 workers of 15 plus years age are engaged in domestic works. The Policy observes that as per the information of BBS collated in 2010, around 125,000 children aged between 5 and 17 years of age are employed as domestic workers and around 80 per cent of these children are girls.

world particularly in economically backward countries.⁷ The crafting of the *Domestic Worker Protection and Welfare Policy (Draft)*, 2010 and then not finalising it for years does not send a positive signal about the intention of the Government.

This study report would endeavour to explore the aspirations made in regulating the domestic work by children in Bangladesh and to what extent such policies have been reflected in the relevant statutory laws. This study report would sift through the primary sources such as the relevant statutory laws, reported decisions of the Supreme Court (SC) of Bangladesh, and policies relating to rights of children and engagement of children as domestic workers. It would also survey the relevant secondary literature on these legal and policy instruments. On the basis of these primary and secondary sources, the study report would recommend some necessary steps which may be taken for regulating the engagement of children as domestic workers.

The plight of child workers who may cross borders and work in overseas households though can be equally bad or perhaps even worse; that issue is beyond the scope of this study. Because of the complex international and transnational character of the issue, the plight of those children and the legal mechanism to deal with them merits a separate study. In a similar note, the readers of this study report should bear in mind that it is a study on the rights of child domestic workers and the means of uplifting their situation; hence, any issue specific to adult domestic workers (for example, maternity leave) are beyond its scope. It is expected that the outcome of this particular study would be a useful point of reference for policy makers in Bangladesh and commentators working on the legal rights of child domestic workers.

⁷ For a comprehensive global study providing statistical information on domestic workers and the legal protection offered to them in various countries, see International Labour Organization, *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection* (Geneva, 2013).

Current Situation of Child Domestic Workers in Bangladesh

Almost all analysts working on child domestic workers in Bangladesh agree that child domestic workers generally work in a terrible state. Regarding the pervasiveness of the problems of child workers, in *Ain O Salish Kendra v Bangladesh*,⁸ the High Court Division (HCD) of the SC has observed that ‘the gravity of the problems of child labour spreads throughout the country and across multifarious industries and work types where children are engaged in earning for the family.’ Thus, sufferings of child domestic workers are well documented elsewhere and need not be retold here in any great detail.

Typically, children engaged in domestic work in Bangladesh have to work for unusually long hours - well above the official maximum number of working hours for workers in the industrial sector. Most of them work seven days a week without any weekly holiday. Generally, these working children are either paid awfully inadequately or even not paid at all. These children are almost invariably cut off from their own families and are not in a position to bargain with their employers or complain about the maltreatments which they may suffer. The incidents of children employed as domestic workers haplessly suffering from persistent abuse and violence has routinely surfaced in media reports. It is plausible to assume that the reported incidents are only a fraction of the real number of incidents as many such incidents may have escaped the public glare. The sufferings and deprivation of child domestic workers are not limited to physical abuse and torture; rather more often than not they would also have to bear many types of mental sufferings which often remain neglected.⁹

⁸ *Ain O Salish Kendra (ASK), Represented by Its Executive Director and Another v Bangladesh, Represented by the Secretary, Ministry of Labour and Manpower, Bangladesh Secretariat, Dhaka and Others* (2011) 31 BLD (HCD) 36 [ASK v Bangladesh].

⁹ For such a study, see Shatil Ara, Tunazzina Iqbal and Khorshed Alam ‘From Open Fields to Secluded Households: Child Domestic Workers in Bangladesh’ (Alternative Movement for Resources and Freedom Society, Dhaka, September 2011) <<http://www.laborrights.org/sites/default/files/publications-and-resources/AMRF%20report-%20From%20Open%20Fields%20to%20Secluded%20Households.pdf>> at 20th May 2014 [Ara].

The predicament of our workers may in many cases be so dire that the HCD in *BNWLA v Bangladesh*,¹⁰ has compared domestic works to slavery and observed:

It [domestic works] is somewhat akin to the situation in the dark days of slavery when black Africans were rounded up from their homes, packed like sardines into ships and carried to far away America where they toiled in the houses of the white Americans. The slave trade has been long abolished. Sadly, we are far behind times and still engage in practices that are not far less than slavery.¹¹

Of course, there are significant differences between slavery and domestic works by children. First and foremost is that while slavery was legal, treating domestic works inhumanly is without doubt illegal. That said, if the working and living conditions of child domestic workers, their aloofness from their families, and their overall haplessness are considered, it would be difficult to demarcate a clear line between their predicaments and those of the slaves of the past when slavery was considered a legally acceptable practice.

Sometimes in order to escape the persistent abuse and torture, many child domestic workers try to escape the household of their employers. But these desperate children then instead of reaching their homes, may haplessly die due to accidents or fall victims of traffickers or other criminal gangs who use them as their tools. Sometimes in the name of employing children, they are taken away from their homes in rural areas to cities and get trafficked or forced to engage in begging, prostitution or other immoral or illegal activities.¹² In fact, the deplorable situation of the child domestic workers in Bangladesh implies an abject failure of the policy instruments adopted by the Government designed for the protection of children.

¹⁰ *Bangladesh National Women Lawyers Association (BNWLA), Represented by Its Vice-President, Fahima Nasrin v The Cabinet Division, Represented by Cabinet Secretary, Bangladesh Secretariat, Dhaka and Others* (2012) 17 MLR (HCD) 121 [BNWLA v Bangladesh].

¹¹ *Ibid.*, at para 36.

¹² UNICEF, *Child Sexual Abuse, Exploitation and Trafficking in Bangladesh*, <http://www.unicef.org/bangladesh/Child_Abuse_Exploitation_and_Trafficking.pdf> at 28 May 2014.

International Legal Regime on Regulation of Domestic Works by Children and Bangladesh

As a member of the international community and a subject of the international legal regime, Bangladesh has signed a number of international legal instruments relating to the protection of children. Some of these instruments contain provision/s which either directly or indirectly deals with the rights of child domestic workers. Bangladesh is a signatory of the *Convention on the Rights of the Child*, 1989¹³ since 26th January 1990 which it ratified on 3rd August 1990.¹⁴ Article 27 is of particular importance as it states that ‘States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development’ as well as Article 28 that connotes the right of a child to education. Article 32 also addresses the fact that ‘States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.’ Article 37(a) is integral to the plight of Bangladeshi child domestic workers since it states that ‘No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment’.

The Government of Bangladesh also signed and ratified the *International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour* in 2001.¹⁵ Bangladesh has ratified some of ILO’s fundamental Conventions including the *Forced Labour Convention, 1930* (No. 29), the *Abolition of Forced Labour Convention, 1957* (No. 105), the *Minimum Age (Industry) Convention (Revised), 1937* (No. 59) and the

¹³ *Convention on the Rights of the Child*, 1989 opened for signature 20th November 1989, 1577 UNTS 3 (entered into force 2nd September 1990).

¹⁴ United Nations Treaty Collection, *Convention on the Rights of the Child: Status as at 22-05-2014* <http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-11&chapter=4&lang=en#EndDec>, at 22nd May 2014.

¹⁵ International Labour Organization, *Bangladesh Decent Work Country Programme, Asian Decent Work Decade, 2006-2015* <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_106634.pdf> at 22nd May 2014, at 4 [Decent Work Country Programme].

aforesaid *Worst Forms of Child Labour Convention*, 1999 (No. 182).¹⁶ Bangladesh is yet to ratify one of the latest ILO Conventions which is meant to protect domestic workers including child domestic workers. This is *Convention No. 189* which is the *Domestic Workers Convention*, 2011 that came into force on 5th September 2013.¹⁷

The *Domestic Workers Convention*, 2011¹⁸ establishes certain principles that lie in conjunction with how child domestic workers' situation may be made better. The *Domestic Workers Convention* underscores that children in developing countries continue to be among the most marginalized.¹⁹ Article 3 mentions that states would have to take steps to ensure the successful promotion and protection of human rights of all domestic workers. There is a requirement of setting a minimum age for domestic workers which must be consistent with the provisions of the *Minimum Age Convention*, 1973 (No. 138), and the *Worst Forms of Child Labour Convention*, 1999 (No. 182), and cannot be lower than those established by national laws for workers usually.²⁰ Signatories to the Convention are obliged to make certain that domestic workers who are under 18 years of age and above the minimum employment age must not be denied compulsory education, further education or vocational training.²¹

State parties to the Convention are bound to prevent abuse, harassment and violence against domestic workers. On the other hand, decent working circumstances and fair terms of employment need to be ensured for the domestic workers and if they reside

¹⁶ International Labour Organization, *Ratifications for Bangladesh* <http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103500> at 22nd May 2014.

¹⁷ International Labour Organization, *Information System on International Labour Standards: Countries that Have Not Ratified This Convention, C189 - Domestic Workers Convention, 2011 (No. 189)* <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:2551460:NO> at 22nd May 2014.

¹⁸ *Convention Concerning Decent Work for Domestic Workers* (Convention No. 189).

¹⁹ *Ibid.* See Preamble.

²⁰ *Ibid.*, Article 4(1).

²¹ *Ibid.*, Article 4(2).

in the household in which they work, decent living conditions respecting their privacy must be ensured under Article 6. The ability to freely reach agreements for daily and weekly rest or annual leave is stated in Article 9. It further stresses that every domestic worker, including children, has the right to a secure and healthy working environment and state parties shall have to take steps to make sure of their occupational health and safety.²²

Some other recent up-to-date major ILO Conventions relating to works by children also not ratified by Bangladesh include the *Minimum Age Convention*, 1973 (No. 138) and the *Minimum Wage Fixing Convention*, 1970 (No. 131).²³ However, Bangladesh is in the last stage of ratification of Convention No. 138.²⁴ As Bangladeshi courts do not treat international treaties signed by the executive as binding laws unless their provisions are expressly incorporated into domestic laws, these international instruments have limited practical value for the intended beneficiaries.²⁵ However, when the domestic law on a particular point is ambiguous or there is a total absence of any provision on a particular point, courts may draw upon the principles enunciated in the international legal instruments signed by the executive.²⁶ Therefore, the Bangladeshi courts would not normally rely upon or refer to international legal instruments unless domestic law on a point is non-existent or *non liquet*. Thus, unless the provisions of an international convention ratified by Bangladesh has been incorporated in a domestic statute, essentially the practical value of ratification of international legal instruments by

²² *Ibid*, Article 13(1) of the *Convention*.

²³ International Labour Organization, *Up-to-date Conventions Not Ratified by Bangladesh* <http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103500> at 22nd May 2014.

²⁴ International Labour Organization, Governing Body's 320th Session, *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_236200.pdf> (7 February 2014) at 15.

²⁵ *Hussain Muhammad Ershad v. Bangladesh and Others* (2001) 21 BLD (AD) 69, paras 2, 3, 12.

²⁶ *Ibid*.

Bangladesh would be limited to the requirement of compliance sought by periodic reporting or other mechanisms as provided for by those instruments.

National Legal and Policy Instruments and Executive Efforts on Regulation of Domestic Works by Children

The *Constitution of Bangladesh* contains some provisions which can be applied to regulate some aspects of child domestic work. Article 34(1) of the Constitution unequivocally denounces all forms of forced labour. Article 14 of the Constitution proclaims ‘to emancipate workers and backward sections of the people from all forms of exploitation’ as a fundamental responsibility of the state. Article 28(4) of the Constitution grants the Government power to make ‘special provision in favour of women or children or for the advancement of any backward section of citizens’, even though such special provisions may discriminate against some other. However, Articles 14 and 28(4) of the Constitution are all contained in the Fundamental Principles of State Policy part of the Constitution, and though they would be applied by the state in law making, would remain fundamental to the governance of Bangladesh, and would act as a guide to the interpretation of laws, they are not judicially enforceable.²⁷

In Bangladesh, the age of ‘child’ has been specified in various legal and policy instruments in various ways. The *National Children Policy*, 2011, the most comprehensive policy dealing with children welfare in Bangladesh states that children would mean all individuals below 18 years of age.²⁸ The *Children Act*, 2013,²⁹ dealing with the rights of children in Bangladesh defines all persons under the age of 18 years as children.³⁰ However, the law limits its scope on this issue by qualifying it with the

²⁷ *Constitution of the People’s Republic of Bangladesh*, 1972, Article 8(2).

²⁸ Government of the People’s Republic of Bangladesh, Ministry of Women and Children Affairs, *National Children Policy*, 2011 (February 2011), para 2 [Children Policy, 2011].

²⁹ Act No. 24 of 2013.

³⁰ *Ibid*, Section 4.

following words ‘for fulfilling the objectives of this law’.³¹ This Act essentially deals with the treatment of children who come in conflict with laws and it has no provision on child workers per se.

The *Repression of Violence against Women and Children Act, 2000*³² defines children as anyone below the age of 16 years.³³ This Act deals with children as victims of offences. In terms of civil matters, the *Majority Act, 1875*³⁴ stipulates that every person under the age of 18 years (however, those minors for the superintendence of whose property guardians have been appointed by courts, are considered to attain majority when they are of 21 years age).³⁵ In case of criminal liability, the *Penal Code, 1860*³⁶ provides that a child under 9 years of age cannot be criminally responsible for the commission of any offence;³⁷ a child aged between 9 to 12 years can only be responsible for an offence if it can be found that the child has sufficient maturity of understanding to judge of the nature and consequences of her/his conduct.³⁸ Thus, as these laws differ in their objects, though the theoretical basis for the fixation of the age of child in differing ways may be questioned, it apparently is not a practical issue.

In terms of the legal age for employment, there is some incongruity among the existing laws and policies. Interestingly, even the *National Child Labour Elimination Policy, 2010* by stating that ‘as age is the decisive factor in determining the definition of a child, it would have been better if a uniform age of child-adolescent could have been fixed’³⁹ recognises the incongruity but does not deal with it. The definition of workers as

³¹ *Ibid.*

³² Act No. 8 of 2000.

³³ *Ibid*, Section 2(k).

³⁴ Act No. IX of 1875.

³⁵ *Ibid*, Section 3.

³⁶ Act No. XLV of 1860.

³⁷ *Ibid*, Section 82.

³⁸ *Ibid*, Section 83.

³⁹ Ministry of Labour and Employment, Government of the People’s Republic of Bangladesh, *National Child Labour Elimination Policy, 2010* (March 2010), Definition and Age of Working Children, para 6.

contained in Section 2(65) of the *Bangladesh Labour Act, 2006*⁴⁰ only includes those engaged in establishments or industries and thus, domestic workers are not entitled to protection under this Act. Section 1(4)(o) of the Act also unequivocally provides that domestic workers would not be covered by this law. According to this Act, child would mean anyone under the age of 14 years⁴¹ and adolescent would mean anyone above the age of 14 years but below the age of 18 years.⁴² This Act provides that anyone below the age of 14 years cannot be employed in any work and children above 14 years but below 18 years can only be employed when a certificate of fitness is granted to her/him by a registered medical practitioner.⁴³ The Act provides a leeway for employing children in light works in that a child above the age of 12 years but below 14 years may be appointed in light work.⁴⁴

The *Domestic Workers Protection and Welfare Policy, 2010* (Draft) provides that no child below 14 years of age can be employed in domestic work. But it also provides that in special circumstances, a child who is 12 years old, can be employed in such household work which is not dangerous for her/his health and development and would not hamper education of the child. Of course, as there is no objective criterion to decide what is not dangerous to the health of a child and her/his development, it seems that this limited scope would be open to be misused. Even more importantly, this is just a draft policy and unless this becomes operational, even if a child below 12 years is employed in domestic work, it appears that would not constitute an offence under any law in force in Bangladesh.

Apparently, the only legislation that directly deals with domestic workers in Bangladesh is the *Domestic Servants Registration Ordinance, 1961*.⁴⁵ According to this

⁴⁰ Act No. 42 of 2006.

⁴¹ *Ibid*, Section 2(36).

⁴² *Ibid*, Section 2(8).

⁴³ *Ibid*, Section 34.

⁴⁴ *Ibid*, Section 44.

⁴⁵ East Pakistan Ordinance No. XLIV of 1961.

Ordinance, domestic worker would include ‘every person who renders domestic services (i.e., services pertaining to household affairs) to his employer in lieu of wages or any other consideration’.⁴⁶ However, this Ordinance, as its title would connote, has not been passed for giving any specific rights to domestic workers or imposing any obligation on the employers vis-à-vis the workers; rather this has been passed merely for imposing an obligation on the domestic workers in very limited areas covering parts of the Dhaka metropolitan area only that they must report and register their names and address with the police.⁴⁷ Given that the Ordinance was promulgated by a martial law regime in Pakistani colonial era, its emphasis on reporting and registrations is perhaps hardly surprising.

Pointing to some features of the *Labour Act*, 2006, an analyst has commented that from the view point of the domestic workers, this legislation actually moves backwards.⁴⁸ For example, as domestic workers were included in the definition of workers as contained in the *Minimum Wages Ordinance*, 1961,⁴⁹ wages for them could be fixed under the legal mechanism provided for in the Ordinance. However, as Section 353(1) of the *Bangladesh Labour Act*, 2006 repeals the *Minimum Wages Ordinance*, 1961, the wages for domestic workers cannot now be fixed under the statutory regime without the enactment of any new legal instrument.

The *Children (Pledging of Labour) Act*, 1933⁵⁰ (also repealed by the *Bangladesh Labour Act*, 2006) declared any agreement to pledge the labour of children void.⁵¹ However, it would appear that such pledge would in any case violate the fundamental rights as enshrined in the *Constitution of Bangladesh* as well as an agreement against public policy and hence, would not appear to be enforceable in any court. Similarly, wages for domestic workers were never fixed under the Ordinance of 1961. Thus, the

⁴⁶ Ibid, Section 2 (a).

⁴⁷ Ibid, Sections 2(c), 3, and Schedule to the Ordinance.

⁴⁸ Dr. Naim Ahmed, *Safeurading the Rights of Domestic Workers: Existing Laws and Ways to Move Forward* <<http://www.dwatch-bd.org/ggtp/keynote.pdf>> at 19th May 2014 [Ahmed].

⁴⁹ Ordinance No. XXXIV of 1961, Section 2(9).

⁵⁰ Act No. II of 1933.

⁵¹ Ibid, Section 3.

absence of these provisions in the existing *Labour Act, 2006* seems to be devoid of any practical value.

Despite the absence of statutory laws dealing with domestic works by children, all agreements by children to engage in domestic works would fit in the quite wide import of the definition of legally enforceable contracts as contained in Sub-Sections (e) and (h) of Section 2 the *Contracts Act, 1872*⁵² and even if oral, can be enforced by civil courts provided sufficient evidence is produced by the party seeking relief. Any cruel or criminal acts perpetrated against child domestic workers can be punished under the existing penal laws such as the *Penal Code, 1860, Repression of Violence against Women and Children Act, 2000*. Of course, when a violation of fundamental rights of a child domestic worker occurs, a writ petition can be filed but as such petitions cannot be filed against a private person, this would prove to be an ineffective tool for seeking redress against the employer in individual cases. Civil or criminal actions though viable in theory, would have limited practical usage for child domestic workers as they can only be of use if the workers themselves or someone else seek the recourse of law. This is where Government bodies can come in to play and assist the child domestic workers by being vigilant and espousing the grievance of the latter against their employers.

The plight of domestic workers and the Government's responsibility to protect them from systemic neglect has been at issue in *BNWLA v Bangladesh* and in this case, the HCD has issued ten specific directions upon the Government. The 10 directions are: (1) taking immediate steps to prohibit all forms of employment of children (including domestic works) up to the age of 12 years; (2) obliging employers of child domestic workers to provide for the training/employment of the child domestic workers aged between 13 to 18 years; (3) implementing the *National Child Labour Elimination Policy, 2010*, and particularly recommended setting up of a focal Ministry/focal point, Child Labour Unit and National Child Labour Welfare Council for its implementation; (4) taking measures for inclusion of child domestic workers within the *Labour Act, 2006* and implementing the beneficial provisions of the *Draft Domestic Worker Protection and*

⁵² Act No. IX of 1872.

Welfare Policy; (5) monitoring the cases of violence against the domestic workers and ensuring prosecution of the perpetrators of such violence; (6) maintaining a list of children in a register to be kept in every union *parishad* and obliging parents of young children who send their children from rural to urban areas for work to register the details of the child; (7) setting up a mandatory registration regime for child domestic workers which would require all employers to register the details of children or other domestic workers with local government units such as *pourashava* or municipal corporations (though not union *parishads*);⁵³ (8) expecting that the Government would take steps to enact law requiring that the employers must ensure health check-up of domestic workers once in every two months; (9) requiring that existing legal framework would be strengthened in such a way that benefits of regulated working hours, rest, recreation, salary etc. enjoyed by industrial workers are also ensured for all domestic workers; and (10) requiring that laws would ensure proper medical treatment and compensation to be paid by employers to the domestic workers for any illness, injury or fatality occurring in the course of employment or as a result of it.⁵⁴

Directions issued by their Lordships in this case follows an in-depth analysis of the various ill effects of domestic works on the workers, is well-intoned, and based on a genuine desire to ameliorate the working and living conditions of child domestic workers. Hence, their Lordships must be lauded for taking a thorough view on an area that has generally been neglected by the legislature. However, the wisdom behind some of the directions, their desirability, or practicality is not beyond question. Some of the directions are expressed in so broad and imprecise terms that whether or not those have been implemented to any meaningful extent can hardly be assessed by any objective

⁵³ The judgment does not give any justification for the exclusion of union *parishads* from the ambit of such registration regime. Presumably, union *parishads* have been excluded because it has been assumed that child domestic work is only an urban phenomenon or children working in rural areas would stay close to their own families and so, they would be less vulnerable. However, such assumptions may not always be correct as though they would reflect the common trend; their exceptions are also not rare.

⁵⁴ BNWLA v Bangladesh, above note 10, at para 40.

assessment standard.⁵⁵ Thus, even by some tinkering with the existing laws and policy instruments, the Government may validly claim that it has followed the directives issued by the HCD.

In most of the cases, the directives issued by their Lordships stipulate what needs to be done but does not provide for any punishment for their non-compliance. As according to the doctrine of separation of powers, it is the prerogative of the legislature to legislate and the court's only to interpret the laws, it is understandable that the HCD could not provide for punishment for the non-compliance with its directives. That said, this feature of the judgment is probably its first and foremost limitation as opposed to a statutory law as a tool for the protection and promotion of child workers.

Generally, most of the directions have been issued at the Government without mentioning any particular agency of the Government and vesting them with any specific responsibility. Of course, it is for the Government to decide who would do what to implement the directives of the HCD. Hence, just that the directives are not being addressed to any specific agency of the Government cannot in any way absolve the Government of its responsibilities to honour them. However, if specific Government agencies were imposed upon specific obligations relating to domestic works by children, clearly their performance could have been monitored much more easily and that could have helped to ensure their accountability.

In some cases, one may be excused for arguing that the directives issued are simply quixotic or too sketchy to engender intended outcomes. For example, in a country like Bangladesh where most of the population do not get any facility for periodic medical check-up, a law demanding that all employers of domestic workers would provide for health check-up of workers at least once in every two months- seems to be a little too far ahead of time. Thus, the jittery attitude or reluctance of the legislators regarding the enactment of a law for implementing this provision can too some extent, be understood.

⁵⁵ For example, monitoring the cases of violence against the domestic workers and ensuring prosecution of the perpetrators may arguably be achieved simply by setting up monitoring cells to look into this.

Of course, employers of domestic workers can and should be asked to compensate their workers for any disease, injury, fatality suffered by them in the course of or as a result of their employment. There is also no doubt that a law to that effect can be drafted and if in case of any dispute as to the responsibility of the employer of a domestic worker, if found responsible, pursuant to a judgement of a court or tribunal, the employer should be held liable to pay such compensation. However, many employers of domestic workers may lack the resources necessary to pay the compensation required to meet the needs of the workers. In such cases, the existence of legal provisions would not be sufficient to meet the needs of domestic workers.⁵⁶

The direction that the Government should include domestic workers within the definition of workers in *Labour Act, 2006* - it may respectfully be submitted that this is a bit too simplistic and an abrupt note on a quite complex question. This is so because upon reading the various provisions of the Act, it would appear that it has been passed by the legislature with a conscious design to differentiate between domestic works and industrial or factory works.⁵⁷ Obviously, the HCD conceived that the inclusion of domestic workers would make them eligible for enjoying those benefits which are now only enjoyed by workers in the industrial sector but perhaps the same result can be achieved through other means.⁵⁸

The *Domestic Workers Protection and Welfare Policy, 2010*, stipulates that union *parishad*, *pourashava*, and office of councillors of city corporations would be treated as registering authority relating to domestic workers.⁵⁹ It demands that terms and conditions of work of all workers engaged in domestic work would be regulated by a written contract (in case of child workers aged between 14 to 18 years, the employer would enter

⁵⁶ Solution to this problem has been mooted in the next section of this study report.

⁵⁷ Ahmed, above note 48, at 17.

⁵⁸ This issue has been explored in greater detail in the next section.

⁵⁹ Draft Domestic Worker Policy, 2010, above note 5, at para 2.4.

into a contract with the child's guardian).⁶⁰ In case of children without guardians, written intimation of the registration authority would amount to a contract.⁶¹ Upon commencement of domestic work, the employer must issue the worker an identity card; one copy of which would also be retained by the employer and another would be submitted to the registering authority.⁶²

Under the *Draft Domestic Workers Policy, 2010* without fixing wages no one can be engaged as a domestic worker and the wages must be fixed in money.⁶³ The policy also fixes the maximum number of working hours per day and provides for rest and leave for domestic workers.⁶⁴ It demands that if a domestic worker becomes ill, then the employer of the worker would arrange for the treatment and bear the cost of the treatment.⁶⁵ It envisages that if a domestic worker suffers from any accident while working for the employer, then as per the decision of the registering authority, the worker is to be paid compensation by her/his employer.⁶⁶

The Policy imposes an obligation on the Government that through circular/departmental order/memorandum it issues specific directions upon the local administrators as to registration of domestic workers and fixes a registering authority for every locality.⁶⁷ The policy envisions that the Government would introduce a shelp line system for rendering assistance to domestic workers and promote activities that would raise awareness about the rights of domestic workers.⁶⁸ It also enumerates that the Government would fix minimum wages and such wages would be fixed on a monthly

⁶⁰ *Ibid*, part a, para 3.

⁶¹ *Ibid*.

⁶² *Ibid*.

⁶³ *Ibid*, part a, para 4.

⁶⁴ *Ibid*, part a, para 5.

⁶⁵ *Ibid*, part a, para 8.

⁶⁶ *Ibid*, part a, para 9.

⁶⁷ *Ibid*, part b, para 1.

⁶⁸ *Ibid*.

basis.⁶⁹ There would be a wage card which would mention the wages and every time wages is paid, the worker and the employer would sign the wages card.⁷⁰

The policy requires that the Home Ministry would issue a departmental order to ensure that if a domestic worker becomes a victim of physical or mental abuse, then the concerned police station must take immediate and effective measures.⁷¹ The Government would also form a central monitoring cell, monitoring cells at city corporation and *pourashava* levels, and district and *upazilla* levels.⁷² Monitoring cells would from time to time visit homes at their own instance and upon receipt of complaints.⁷³ If the monitoring team notices any evidence of violence against a domestic worker, they would advise the Deputy Commissioner and central monitoring cell of the incident.⁷⁴ The policy clearly states that these provisions would not stand as a bar to the filing of a criminal case in case of any violence perpetrated against a domestic worker.⁷⁵

The Government of Bangladesh in 2009 set up a Child Labour Unit in the Ministry of Labour and Employment to arrange, observe, and monitor the accomplishments of all child labour related issues.⁷⁶ The Unit is headed by the Joint Secretary (labour) of the Ministry of Labour and Employment. The Government of Bangladesh is also being aided by international agencies in regulating child labour. In order to address problems with child labour in Bangladesh, the ILO International Programme on Elimination of Child Labour, Asian Development Bank, and United Nations Children's Fund (UNICEF) are supporting Bangladesh in developing a National

⁶⁹ *Ibid*, part b, para 2.

⁷⁰ *Ibid*.

⁷¹ *Ibid*.

⁷² *Ibid*, part b, para 4.

⁷³ *Ibid*.

⁷⁴ *Ibid*.

⁷⁵ *Ibid*, part c, para 2.

⁷⁶ Child Labour Unit, Ministry of Labour and Employment, Government of the People's Republic of Bangladesh, <<http://www.clu-mole.gov.bd/>> at 24th May 2014.

Time-Bound Programme towards eradicating all forms of worst forms of child labour by 2015.⁷⁷ The programme's approaches include development and realization of the regulatory and monitoring systems for the implementation of the Action Plan.⁷⁸ It also includes provisions for non-formal education, skills improvement training for the children and socio-economic empowerment programme for their families.⁷⁹

National Children Policy, 2011 pledges that the Government would appoint an 'Ombudsman for the Children'.⁸⁰ Although the Ombudsman lacks coercive powers, the significant role of the office of Ombudsman in ensuring accountability of public officials is well recognised. The Ombudsman may not only make recommendations on the basis of investigations in individual cases but also through circulating reports on the functioning of public officials may uncover systemic problems in the public administration. But although years have gone by since the adoption of the Policy, neither any law has been passed nor even a bill on the appointment of an 'Ombudsman for the Children' is under consideration in the Parliament.

This is even more disconcerting if we note that it has been recommended by the HCD in *State v Secretary, Ministry of Law, Justice and Parliamentary Affairs and Others*,⁸¹ that in concordance with its commitment to the *Committee of the Convention on the Rights of the Child*, the Government establish an Ombudsman for Children/Children's Commissioner/National Juvenile Justice Forum under the chairmanship of a senior sitting Judge of the SC. The HCD has expressed the hope that this body would be given powers to issue directives on the subordinate judiciary and other appropriate public bodies on issues pertinent to justice for children. Clearly this type of a body has been conceived as

⁷⁷ Decent Work Country Programme, above note 15. For a comprehensive list of initiatives by the Government, ILO, and other international organizations, and NGOs, see National Plan of Action 2012-2016, above note 3, at 9-12.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Children Policy, 2011 above note 28, para 10.3.

⁸¹ *State v Secretary, Ministry of Law, Justice and Parliamentary Affairs and Others* (2010) 30 BLD (HCD) 369, at para 6.

an umbrella for matters relating to children in general but it may be expected that the problems relevant to child domestic workers would also fit within its jurisdiction.

A major concern with the policy instruments for the protection of children crafted by the Government in Bangladesh is that they rarely impose any specific obligations on any of the bodies formed under them. Thus, it is no surprise that they would rarely succeed in achieving tangible outcomes or perhaps more possibly pointing to some bits and pieces of those instruments, policy makers would be able to argue that they have yielded positive developments and on the other hand, pointing to other parts of them, their detractors would argue that the instruments have failed to bring about any positive outcome. In such state of affairs, a legitimate question would arise as to whether the public money spent on formulating these policies could have been better spent on policies with concrete obligations imposed on public bodies.

Even when they may impose obligations on public officials, the policy instruments do not include any cost based analysis on the budgetary allocation required for their successful implementation. Thus, the implementation of the policies may also often be hindered by the lack of specific budgetary allocation for taking the steps necessary for implementing them. It is true that the *National Plan of Action for Implementing the National Child Labour Elimination Policy 2012-2016* contains a detailed budget⁸² but it appears that the fund allocated for various actions are inadequate to meet the objectives and fund has not been allocated in alignment with the all the objectives mentioned in the policies. In particular, from the view point of this study report, it is problematic that no specific fund is allocated for child domestic work issues except for the allocation for developing a Code of Conduct for Domestic workers which is aimed at prevention, protection, and elimination of child domestic works.⁸³

⁸² National Plan of Action, above note 3, Appendix 2.

⁸³ Ibid, at page 35.

These policy instruments being aspirations of the Government are expressed in exhortatory terms; they are not worded as binding obligations. They contain what the Government expects to do with regard to the protection of the child workers, not what citizens can ask from the Government. Therefore, the officials vested with various responsibilities can at best be called into question by the Government for any failure to achieve the goals expressed in them. The intended beneficiaries of these instruments, that is, neither the children nor their parents or other relatives have any legal footing to seek enforcement of these policies. Hence, the objectives pursued in the instruments can be meaningful only if the Parliament enacts a law incorporating the essence of the rights contained in the policy instruments.

It is quite difficult to be optimistic about the efficacy of the monitoring cells as envisaged in the *Domestic Worker Protection and Welfare Policy, 2010* (Draft). The monitoring cell consisting of bureaucrats, local leaders, and members of the trade union etc. are busy individuals and they would perform their cell related functions on a voluntary basis. Therefore, it is uncertain as to what extent they would be able or willing to commit their time for performing their functions as mandated by the Draft Policy. This could be different if a professional body could be created for the sole purpose of acting as the monitoring cell.

The policies also do not contain any public reporting procedure on the attainment of the lofty goals mentioned in them which can be monitored by interested individuals and organizations. The reporting procedure is limited to a requirement of submission of reports to bureaucrats. Such internal reporting procedure is not congenial to fostering a culture of public accountability of Government agencies. In order to be meaningful, the reporting of the public agencies working on the protection of child domestic workers should be made available to the public.

Potential Further Measures to Regulate Domestic Works by Children and Improve their Working and Living Conditions

As a matter of priority, the Government would have to implement the directives issued by the High Court Division in *BNWLA v Cabinet Division* which is a constitutional obligation of the Government.⁸⁴ The very fact that the *Domestic Worker Protection and Welfare Policy, 2010 (Draft)*, is in draft stage for years and has not come into effect as an operational policy, in itself, implies that there is either lack of political will or capacity in improving the plight of domestic workers. This inertia of the policy makers may also be attributable to the absence of any trade union or other collective bodies representing the interest of the domestic workers.

Of course, the court lacks coercive powers and can only render judgments. Now as apparently the Government has failed to honour its constitutional obligations⁸⁵ and implement the directives of the HCD or are being too slow to implement them; the civil society groups, ILO, and other organizations working on child and labour rights must exert pressure on the Government. Even if we assume that the Government has been hamstrung by the constraint of resources necessary to implement the directives, relentless pressure on the Government would act as a watchdog against negligence of the executive. In other words, such pressure can ensure that the Government would promulgate necessary regulations without delay and take those measures the implementation of which is dependent on resources, gradually.

In addition to the implementation of the policies and the directives of the HCD, some additional measures for protecting the child domestic workers can be taken. As a general rule, it is the responsibility of the claimant to prove her/his case.⁸⁶ However, the general rule on evidentiary burden has got its exceptions; in some cases for ensuring the

⁸⁴ See, Article 112 of the *Constitution of the People's Republic of Bangladesh, 1972* which provides that 'All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court'.

⁸⁵ Of course, as the HCD has not fixed any specific time frame to implement the directives this claim has to be made with qualifications.

⁸⁶ See Section 101 of the *Evidence Act, 1872* [Act No. I of 1872]

ends of justice, the law shifts this burden to the accused/defendant. In particular, when the accused/defendant has disproportionate degree of power over the claimant, the law may resort to this burden shifting.⁸⁷ Following this trend, a law may be passed that when a fatal or grave injury would occur to a child domestic worker living in the household of the employer and no reasonable explanation of the injury or fatality can be found, the burden of proving that the injury has not occurred due to any action/inaction/negligence of the employer or anyone else in the employer's household would fall on the employer.

This type of provision should be helpful because often a child victim of torture/negligence would be the only one to speak for her/him and all the others who may be in a position to give testimony before the court would be associated with the employer. In case of death of the worker, even the lone victim's ability to give evidence would not be there. Hence, if the child has to prove her/his case against the employer, in absence of a burden shifting rule, she/he may fail to prove the case. One may contend that often there would be many persons living in a single household and this law may unduly harass the employer for the guilt of others. Such a contention can be allayed by noting that burden shifting is a mere procedural rule and does not amount to conclusive evidence. Again, even if the employer is not personally responsible for action of others in her/his household, when the employer would know that the maltreatment of a child domestic worker would potentially expose her/him to criminal liability, there would be much more care on the part of the employer about the protection of the child.

Unless poor families can be incentivised to send their children to school,⁸⁸ it is difficult to see that laws and policies would succeed in encouraging them to send their

⁸⁷ For an example of such burden shifting in the context of civil matters, see 16(3) *Contract Act*, 1872 [Act No. IX of 1872] which reads 'Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other'.

⁸⁸ In this regard, initiatives such as providing free books to all school going children or free education for female children, small stipends for school going female children, and food ration to a section of the school going children are laudable but would not be enough for extremely poor families. The limitation of these

children to school and not to engage them in employment in domestic works or other employments.⁸⁹ It is only natural that people in a desperate situation would resort to desperate measures and the fear of legal sanctions can hardly be an effective deterrent in preventing them from acting in violation of legal provisions. In other words, the factors driving children to sacrifice the innocence of their childhood and work in the domestic or industrial sectors are mainly economic and if these economic factors cannot be addressed, legislations punishing parents or guardians for engaging their children in paid employment would fail to address the real factors contributing to employment of children as workers. Thus, sticks (legislations proscribing employment of children below 12 years) would only be effective if they are accompanied by carrots (incentives for not taking up paid employment below 12 years) for the parents or in case of children living on their own, for them directly. The efforts of some non-government organizations (NGOs) which have succeeded in affording education to working children, though sporadic and limited to some areas of Bangladesh only, illustrates that such efforts can succeed.⁹⁰

The obligation of the employer to pay the cost of treatment or compensate for diseases, injuries and the likes sustained by workers in the formal sector is a recognized legal norm. Hence, there is strong moral imperative for extension of this principle to the domestic works, but it should be borne in mind that the liability of an employer of a domestic worker towards her/his employees for injuries, diseases or the likes, would be an unspecified sum and can at times be of such a large amount that satisfying such claim would make an average employer broke. In such a case, the obligation of an employer towards her/his domestic worker can stand in the way of performing the obligation of maintaining dependants in her/his own family. In some cases, an employer may have so

initiatives is that although they may cover the cost of education, they are not necessarily able to substitute the income generated from employment of children.

⁸⁹ The need for such an incentive has also been recognized by the HCD in *ASK v Bangladesh*, above note 8, at para 20 where it said that ‘the education system has to be more attractive for the poorest citizens, at least by providing a level of income for the family which will not require the children to go to work.’

⁹⁰ *Ibid.*

limited financial resources that even a court's order to pay compensation to the worker would remain unsatisfied. This situation can probably be avoided by the introduction of an insurance scheme, the premium of which would have to be paid by employers of domestic workers and in return of this premium, the insurance company would bear their risk.⁹¹

The critics of an insurance scheme for domestic workers may argue that even the *Labour Act, 2006* does not require a mandatory insurance scheme for compensating workers in the industrial sector unless a particular establishment has at least 100 workers employed in it.⁹² Hence, they may contend that there is no case for such a scheme to be introduced for domestic workers. However, in Bangladesh, the culture of taking insurance policies as a means for limiting exposure to risk is not entrenched, and this may have prompted the legislature not to adopt a mandatory worker's compensation scheme for industrial workers in Bangladesh except for those who work in establishments where 100 or more persons are employed.

It may be submitted that in reality, the wisdom of the legislature's apparent emphasis on the size of an establishment (possibly also concomitant emphasis of the capital invested) is debatable. As insurance is a means to limit risk, the deciding factor of a mandatory insurance scheme for workers should be the risks involved; not the size or economic muscle of the establishment where they work. Again, in a way as private employers of domestic workers or small industrial establishments would generally possess comparatively limited means to pay compensation, it would appear that the chance of them failing to pay compensation is no less than large commercial establishments. Hence, they may need insurance policies as much as the large scale industrial establishments may.

⁹¹ The detailed scheme for such a mandatory insurance policy is beyond the scope of this study and if a regulation imposes a legal requirement of mandatory insurance policy for domestic workers, crafting the details of a scheme can be taken care of by the Insurance Development and Regulatory Authority of Bangladesh.

⁹² Act No. 42 of 2006, above note 40, Section 99(1).

The *National Domestic Worker Protection and Welfare Policy*, 2010 (Draft) wants to vest the duty to fix the amount payable to a domestic worker in case of an accident, in the registering authority. This body as envisaged in this draft policy would engage elected local politicians, local elites, and field level bureaucrats. It is natural to apprehend that such a body would tend to favour the privileged (employers) over the disadvantaged (domestic workers).⁹³ Formal judicial procedure may also be too costly for child domestic workers or even adult domestic workers to access. Thus, as a middle ground, a sort of quasi-judicial body consisting of retired judicial officers can be put in place to adjudicate compensation or other civil disputes between the parties.

The members of such quasi-judicial body may be paid honorarium by the Government. In order to minimise costs, it should be provided that neither party would be allowed to appoint lawyers for presenting their cases. For bringing any claim to this quasi-judicial body, the domestic workers should not be required to pay any fee but the employers may be required to pay a certain fee or at least deposit a refundable fee (to be forfeited in case of an unsuccessful claim).⁹⁴ Unless an award of this quasi-judicial body exceeds a certain amount of money (say half a million Bangladeshi taka), the award rendered by it should be treated as final and non-appealable. If these measures can be taken, the inherent inequality faced by domestic workers in vindicating any claim against their employers can be significantly reduced, if not removed. This mechanism should also be able to dispense with the tardiness and expensiveness for which civil courts in Bangladesh are generally considered as an unsuitable forum for workers.⁹⁵

⁹³ Ara, above note 9, at 25.

⁹⁴ One may argue that such a system would be discriminatory however, for achieving special purposes, laws may put in place such separate treatments for parties, *see for example*, Section 41 of the *Money Loan Court Act*, 2003 [Act No. 8 of 2003] requires that for preferring an appeal against a judgement or order of the Money Loan Court, a financial institution would not have to make any deposit but anyone else preferring an appeal would have to make a certain deposit. In fact, because of the substantial mismatch in wealth and resources between a domestic worker and the employer, the provision suggested here would appear to be a much even-handed one than is the case in *Money Loan Court Act*.

⁹⁵ Ahmed, above note 48, at 13-14.

For criminal matters, it does not appear that a quasi-judicial body as suggested here would be the proper forum and normal criminal procedure should be applicable in such cases. Furthermore, as criminal cases are almost universally prosecuted by the state, the problems faced by the domestic workers should not be as insurmountable as it can be in the case of civil disputes. By this, it is not being implied that the child domestic workers would not face any problem in the criminal justice system rather only that as the burden of paying court fees and other costs of litigation are not an issue in a criminal case; the problem should be comparatively more manageable for them.

There may or may not be a convincing case for a distinct legalisation for the protection of child domestic workers or domestic workers in general with a special set of rules for their protection. Let us proceed to consider the pros and cons of the inclusion of domestic workers within the existing *Labour Act, 2006*. It may be argued by the proponents of such a step that by including domestic work within the purview of the Act of 2006, the status of domestic workers would be lifted as they would automatically be entitled to the protection of the legal provisions on wages, leave, safety and hygiene at work etc.⁹⁶ But it should be noted that granting substantive rights to domestic workers similar to that granted to industrial workers need not necessarily require that they need to be granted under the same legal instrument.

On the other hand, it should be noted that the labour inspectors who are entrusted with the responsibility of overseeing the implementation of the *Labour Act, 2006* are limited in number and already struggle to perform their legal responsibility relating to the industrial and commercial establishments.⁹⁷ The procedure for settlement of the disputes

⁹⁶ Clearly, this seems to be the intention of the HCD as expressed in the directives issued upon the Government in *BNWLA v Bangladesh*, above note 10.

⁹⁷ Taslima Yasmin, 'Burning Death Traps Made in Bangladesh: Who Is to Blame?' (2014) 65(1) *Labour Law Journal* 51, at 55 referring to M. Monjur Morshed, *A Study on Labour Rights Implementation in Readymade Garment (RMG) Industry in Bangladesh: Bridging the Gap between Theory and Practice* (2007) University of Wollongong Theses Collection, at 108.

as enshrined in the *Labour Act, 2006* is also dismissed by some as too cumbersome and time consuming and thus, unsuitable for domestic workers.⁹⁸ Furthermore, if the provisions of the *National Domestic Worker Protection and Welfare Policy, 2010 (Draft)* can be incorporated into a law, the objective of giving legal rights to domestic workers would be achieved. For these reasons, it appears to the author of this study report that inclusion of domestic workers within the purview of the *Labour Act, 2006* is not necessary.

Accession to the *Domestic Workers Convention, 2011* and its ratification by Bangladesh can be a very significant step in abolishing child labour in domestic works. In this regard, Article 3 and 4 of the Convention is of particular relevance. Article 3(2) of this Convention obliges each party to the Convention to take measures for ‘effective abolition of child labour’. If read in isolation, it may appear that this Convention proscribes any employment of persons below the age of 18 years in domestic works and such proscription would need drastic legal intervention in Bangladesh, this is perhaps standing in the way of Bangladesh being a party to it. However, Article 3(1) is qualified by Article 4. Article 4(1) of the Convention requires parties to the Convention to set a minimum age for domestic workers which would have to be consistent with the provisions of the *Minimum Age Convention, 1973 (No. 138)*, and the *Worst Forms of Child Labour Convention, 1999 (No. 182)*, and not lower than what is established by national laws for workers in general. Now if we read relevant provisions of these two treaties together, we would find that the minimum age for starting employment for children from developing countries is 14 years (12 years for light works).⁹⁹ Thus, even if the *Domestic Workers Convention, 2011* is acceded to and ratified by Bangladesh, children above the age of 14 years would be legally allowed to work as domestic workers.

⁹⁸ Ahmed, above note 48, at 17.

⁹⁹ *Convention concerning Minimum Age for Admission to Employment (Convention No. 138)*, Articles 2(4) and, 7(4).

As International legal scholars generally opine that the enforcement mechanism as contained in the ILO Conventions is generally relatively lacklustre,¹⁰⁰ some observers may question the value of accession to and ratification of the *Domestic Workers Convention*, 2011. The principal mechanism of seeking state's compliance with ILO Conventions is submission of reports by the state parties to the ILO which is then assessed and commented upon by organizations of employers and workers of the state party concerned.¹⁰¹ Apart from this, there is also a procedure for submitting complaint by organizations of employers and workers, other state parties, and the ILO Governing Body regarding the non-observance of treaty obligations by a state party.¹⁰² Upon such complaint, inquiry may be conducted and recommendations may follow.¹⁰³ Thus, essentially this is a less strict procedure than followed by some other international organizations such as the World Trade Organization which is much more stringent, detailed, and carries more tangible costs for non-compliance. Indeed, the fact that the Government is acting slowly in acceding to this Convention is perhaps an indication that it appreciates that there are some sort of compliance costs associated with the accession and ratification. Hence, there should be persistent pressure on the Government for ratifying this Convention which is the principal international legal instrument for protection of domestic workers.

Conclusion

In an ideal world, all children would remain care free, would spend their time on studies, recreational activities, enjoy the charms of living with family and neither would they have to worry about their survival, nor would they be encumbered with the burden to work for livelihood or for financially helping their families. However, we live in a world

¹⁰⁰ Ernst-Ulrich Petersmann, 'The WTO Constitution and Human Rights' (2000) 3(1) *Journal of International Economic Law* 19, at 20; Renee Chartres and Bryan Mercurio, 'A Call for an Agreement on Trade-related Aspects of Labor: Why and How the WTO Should Play a Role in Upholding Core Labor Standard' (2012) 37(3) *North Carolina Journal of International Law & Commercial Regulation* 665, at 686-691.

¹⁰¹ *Constitution of the International Labour Organisation*, opened for signature 28th June 1919, 15 UNTS 35 (entered into force 10th January 1920) Articles 22 and 23.

¹⁰² *Ibid*, Article 26.

¹⁰³ *Ibid*, Articles 28 and 29.

which is less than ideal and more importantly, in a country that has significant constraint of resources. Hence, a drastic regulatory measure on child domestic works can inflict much more harm on its intended beneficiaries (children) than no regulation at all.¹⁰⁴ That said, the current state of things cannot but be dealt with well thought out regulations. Despite all our constraints, we must act to ameliorate the situation of our child domestic workers regarding their living and working conditions.

Laws and policy instruments by granting rights on child domestic workers and imposing obligations on their employers as well as public authorities have a critical role to play for improving the plight of a large number of child domestic workers in Bangladesh. But the role of legislations cannot be overplayed. Laws or policy instruments in themselves would have limited practical value. In this regard, the *Child Marriage Restraint Act, 1929* can be cited as an example. While the legislation proscribing child marriage has been in place since the British colonial era, child marriage was widely practiced and the provisions of the Act are being implemented seriously only in the recent era. Clearly, when the social awareness about the evil effects of child marriage has increased; conscious individuals, organizations, and Government officials have started to come forward to put the law into practice. The continued practice of bonded labour of children in parts of Bangladesh which is manifestly unconstitutional and have been asked by the HCD to be put to an end¹⁰⁵ also supports this point that illegal activities which are spurred by dire economic necessities and commonly accepted by the society cannot effectively be controlled by legal provisions alone.

¹⁰⁴ For example, in *ASK v Bangladesh*, above note 8, at paras 10 and 13, the HCD has referred to the *Child Labour Deterrence Act, 1993* of the USA (popularly known as Harkin Bill) which effectively put a ban on import of goods that are produced by factories that employ children. This pressured induced by this, forced children employed in garment factories in Bangladesh out of work and driven them to be employed in much more dangerous and harmful works, see Michael Ewing-Chow, 'First Do No Harm: Myanmar Trade Sanctions and Human Rights' (2007) 5(2) *Northwestern Journal of International Human Rights* 153, at 173.

¹⁰⁵ *BNWLA v Bangladesh*, above note 10, at para 36.

In a similar vein, the effort to legally regulate domestic works by children must go hand in hand with concerted awareness building efforts of the Government and NGOs to underline the evil effects of engaging children under 12 years of age in domestic work, maltreating child domestic workers, and denying child domestic workers the opportunity to grow as a responsible citizen. Such concerted actions would be even more imperative for a country like Bangladesh where public bodies may in many cases suffer from lack of institutional capacity. The concerted actions must ensure that the efforts to regulate child domestic works are meaningful, realistic, and do not inflict any unintended harm on those for whose benefits of whom they are undertaken.

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