

STAGGERING WITH LABOUR STANDARDS OF THE SWEEPING WORKERS IN BANGLADESH

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Abstract

The sweeping communities in Bangladesh are engaged in sweeping under inhuman and hazardous conditions. As a consequence, their dignity, health and morality are inhumanely compromised because of their traditional occupation. However, employment right is protected as 'guaranteed employment' by the Constitution of Bangladesh and, detail laws regarding labour standard is also consolidated in the Bangladesh Srama Ain 2006. This right is also recognized in the international arena through various international instruments. At this backdrop, this study seeks to analyse and advance how far labour standards consolidated in constitution and statute law is applied in sweeping profession in Bangladesh. Further, this study tries to find out difficulties faced by the sweeper community with regard to their age-old sweeping profession. The study further attempts to identify the causes and factors responsible for their deprivations. It also seeks to propose some recommendations for ensuring labour standards in their professional life.

1. Introduction

Sweeper is a name of socially excluded, deprived and discriminated community in our society. Religious stratification in Hindu Community makes them neglected.¹ Historically, Hindu religious community is divided into four groups by the name of 'caste system'. Generally, in Hinduism caste system refers to the division of people into four distinct groups, namely, *Brahmans*, *Kastriyas*, *Vaisyas* and *Sudras*. Those who do not fall under the above categories are considered as 'out-caste'. *Sweeper*, *Dome*, *Methors*, *Rishis* and so on who are mainly engaged on manual occupation; collecting solid waste from domestic, business, hospital, street, public toilets and drains, cleaning the roads, drains and sewerage lines, collecting and transporting medical waste, are considered as 'out-caste' of the society. This intra-religious stratification gives upper caste community more dignified status in the society than the people of lower caste.² However, 'Political Theory'³ states that this division is created by the Brahmans, upper caste, for their own benefit. Brahmans makes the caste system as tool of suppression towards the lower caste in order to place themselves on the 'highest ladder of social hierarchy'. As a result, the people of lower caste have historically been subjected to 'discrimination and marginalization, and are deprived of choices such as free selection of occupation, access to housing,

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¹ 'The Harijans of Bangladesh Living with the Injustice of Untouchability', 2016, Empowerment through the Law of Common People, 1st ed., ISBN 978-984-34-1262-1.

² Ibid.

³ Vidya Bhushan and DR Sachdev, *An Introduction to Sociology*, (1999, Allahabad, Kitab Mahal), p 376.

education and other benefits'. Besides the above this caste based identity or hierarchy also responsible for deciding their profession. 'Occupational theory'⁴ suggests that 'the persons or castes engaged in manual and dirty occupation were treated as inferior in the society'⁵. Further, the theory connotes that 'occupational differentiation' by the name of so-called 'caste system' creates so many out-castes sections in our society. 'Sweeper Community' is one of them. From different statistical⁶ reports, it is found that about 3.5 million sweepers are living across the country. Among them the number of sweeper in the capital (Dhaka) is about half million.⁷ Discrimination, insecurity, subordination, degradation are the common phenomenon to the community involved in sweeping profession. Besides, social exclusion and marginalization make their condition more acute. The people of this community in Bangladesh lead a miserable life. In this regard, the study shall attempt to identify, with special emphasis on their age old sweeping profession, the causes and factors responsible for their deprivations.

However, this article is based on socio-legal research designed with a fusion of both qualitative and quantitative methodologies. In order to justify the article the writer also conducted an in-depth study among three sweeper communities around Dhaka City.⁸ Information collected from the field visits would be used as primary source, and other research materials in the kind of secondary source such as, statutes, books, journals, seminar papers, thesis reports, and scholarly articles would be used to complete the study.

2. Right to Employment: Conceptual understanding from National and International perspective

Right to employment is one of the prime rights of every human being. It implies that 'everyone should be given the opportunity to work without any discrimination'. 'Right to work' in Bangladesh is defined as 'guaranteed employment' under 'fundamental principle part'⁹ in the supreme law of the country.¹⁰ The supreme law of the land creates a positive obligation towards the

⁴ Ibid.

⁵ Ibid.

⁶ It is reported that "around 32,000 sweepers live in Dhaka city. Among them, around 3,000 are employed by the Dhaka City Corporation for its cleaning and waste collection activities. The rest are employed by government and non-government agencies. The sweepers live in 18 sweeper and Dalit colonies in the city. DCC set up such colonies at Ganaktuli, Dayaganj, Dhalpur, Sutrapur, Agargaon and Gabtoli embankment. Around 5,000 more live in 13 smaller settlements in Naryanganj and Savar (BDHR)."⁶

⁷ Tanvir Hossain, *The sweepers: A socially excluded community*; available at: <https://www.thedailystar.net/news/the-sweepers-a-socially-excluded-community>; accessed on 26 September 2018; Muzibur Rahman Masud, *The Life and Days of (Dalit) Sweepers in Bangladesh*, Published on Daily Jugantor, Bangladesh, 24-4-2006; available at: <https://idsn.org/wp-content/uploads/2015/10/Housing-Bangladesh-BriefingNote.pdf>; accessed on 26 September 2018.

⁸ The Study was conducted in Ganaktuli Sweeper Colony, Nazira Bazar Sweeper Colony & Warri Sweeper Colony in the year 2018 between March to October. The study was conducted on 80 respondents.

⁹ *Constitution of Bangladesh*, Part 2.

¹⁰ *Constitution of Bangladesh*, article 15.

state to 'ensure right to work at a reasonable wage having regard to the quantity and quality of work'.¹¹ It further provides that 'work is a right, a duty and a matter of honour for every citizen who is capable of working'.¹² The Constitution of Bangladesh also requires that, "everyone shall be paid for work on the basis of the principle from each according to his abilities, to each according to his work."¹³ Besides the above provisions 'right to work' is also enshrined in different provisions in fundamental rights part. 'Right to Employment' is protected by fundamental rights by 'prohibiting all forms of forced labour'¹⁴, 'guaranteeing right to freedom of association and to form trade unions'¹⁵, 'ensuring right to equality of opportunity for all citizens in respect of employment or office in the service of the Republic'.¹⁶ However, the Constitution of Bangladesh also empowers the state to make special provision to secure 'right to equal opportunity of employment' for the 'backward section of citizens'¹⁷ of the Republic of Bangladesh.

In 2006 the Government of Bangladesh enacted the Labour Act with object "to protect the right of worker and to make better relationship between worker and employer". The *Bangladesh Srama Ain 2006* of Bangladesh contains detail labour standards of the worker, e. g. 'determination of minimum wage, payment of wages and compensation for injuries to workers, formation of trade unions, raising and settlement of industrial disputes, health, safety, welfare and working conditions of workers etc.'¹⁸ Further, for the protection of the right of government employee, there is Government Service Rules of Bangladesh.

'Right to Employment' is also recognized in the international arena through various international instruments, e.g., *Universal Declaration of Human Rights 1948*, *International Covenant of Economic, Social and Cultural Rights 1966*, *ILO Declaration on Fundamental Principles and Rights at Work 1998*.

3. Nature and Characteristics of 'Sweeping Profession'

Waste management is one of the prime functions for every Municipal Corporation in Bangladesh. In each City Corporation around Bangladesh there is a 'Waste Management Department'. Main functions of that department are 'sweeping inside the ward boundary, removing illegal banner festoon, collecting solid waste from domestic, business, hospital, street, public toilets and drains, cleaning the roads, drains and sewerage lines, collecting and transporting medical waste' etc.¹⁹ Municipal Sweepers who are commonly known as City Corporation Cleaner are mainly responsible for cleaning the City Corporation of Bangladesh. City Corporation Sweepers are working for the Conservancy Department dealing with the management of the city's solid waste.

¹¹ *Constitution of Bangladesh*, article 15.

¹² *Constitution of Bangladesh*, article 20.

¹³ *Constitution of Bangladesh*, article 20.

¹⁴ *Constitution of Bangladesh*, article 34.

¹⁵ *Constitution of Bangladesh*, article 38.

¹⁶ *Constitution of Bangladesh*, article 29.

¹⁷ *Constitution of Bangladesh*, article 29 (3).

¹⁸ *Bangladesh Srama Ain 2006*.

¹⁹ Available at: <http://old.dncc.gov.bd/waste-management-department/>; accessed on 25 June 2018.

There are different ways and forms of collecting waste. Generally they collect waste into buckets or by the approved city corporation car, only used for carrying garbage, and then carry away the waste to an area where the waste is discarded. The ways of collecting garbage includes street sweeping, drain cleaning and PCSP (Primary Collection Service Provider) activities.²⁰ Street sweepers are mainly 'sweeping main roads, alleys footpath and put together the whole waste in a common place. Then bring it to the designated point/dustbin/container by hand trolley'. Sweepers who are responsible for cleaning drain are sending to the different location of ward with a group of 10 to 12 cleaners and 'cleaning open drain/deep drain/surface drain and storm sewerage line'. PCSP or Primary Collection Service Providers are mainly responsible for collecting 'waste from household and storage to the container from 1 pm to 7 pm'.²¹

The sweepers working in various sectors can be classified into three different categories; *Master Roll Sweeper*, *Out-sourcing Sweeper* and *Permanent Sweeper*.²² Sweepers who work on daily basis are known as Master Roll Sweeper whereas Temporary Sweepers are known as "Out-sourcing Sweepers" are employed on contract basis. Master Roll and Out-sourcing both category of sweeper do not get any job benefit except their daily wages.²³ Mentioning that 'Out-sourcing Sweepers' are working on the basis of 'no work, no pay'.²⁴ However, sweepers worked on permanent basis have almost all benefits and facilities as other government employees have. Sweepers employed on permanent basis are paid as per 20th grade scale, the lowest grade of national pay-scale, of government employee of Bangladesh.²⁵

4. Employment Security and General Conditions of Work

Security of employment is the 'assurance' that the worker has continuity in his or her work life until retirement. It is the protection against 'arbitrary, unfair and unjustified dismissal'.²⁶ It is further defined that "employment security means that workers have protection against arbitrary and short notice dismissal from employment, as well as having long-term contracts of employment and having employment relations that avoid casualisation".²⁷ In response to the definition of ILO 1995, *Sukti Dasgupta* replied that this definition of 'employment security' gives protection only to the 'wages and salary worker'²⁸ but it does not gives protection to the 'self-employed worker'.²⁹ With regard to the protection of employment she classified worker into two groups; 'permanent or regular worker' and 'self-employed or independent worker'. Permanent or regular basis

²⁰ Note 1.

²¹ Note 7.

²² Note 1.

²³ Notes 1 and 6.

²⁴ Ibid.

²⁵ Ibid.

²⁶ *Sukti Dasgupta, Employment Security: Conceptual and Statistical Issues*, 2001, International Labour Office, Geneva; available at: <http://www.ilo.org/public/english/protection/ses/download/docs/employ.pdf>; accessed on 27 June 2019

²⁷ Ibid, ILO 1995, p18.

²⁸ Ibid, p 2 "It is they who are employed by some legal entity, and are at risk of being dismissed by that legal entity, and can have a stable or unstable employment relation with their employer"

²⁹ Note 14.

worker are those person who are employed on permanent basis and their employment is 'legally protected against arbitrary dismissal and is likely to continue'.³⁰ In sweeping profession in Bangladesh the above category of worker as defined by *Sukti Dasgupta* are known as 'Permanent Employee Sweepers' who are paid under 20th grade scale, the lowest grade of national pay-scale, of government employee of Bangladesh. Mentioning that their job is secured by law and they get full benefit as other government employee of Bangladesh.

On the other hand, 'Self-employed worker' are those who has chosen their work voluntarily. *Sukti Dasgupta* states that various kinds of non -standard workers such as 'independent workers', 'contract workers' etc. fall into the category of self-employed worker. The main distinction between permanent and self-employed worker is that permanent employee are those who are "employed by some legal entity, and are at risk of being dismissed by that legal entity, and can have a stable employment relation with their employer."³¹ However, the scope of legal protection of 'self-employed' worker is low and irregular. Arbitrary dismissal, unfair job conditions, unjustified job security, discrimination, unstable job tenure are the common phenomenon towards self-employed worker. "Master Roll Sweeper" and "Out-sourcing Sweeper (Temporary)" are fall under the category of 'self-employed worker'.

So, the notion is clear that the employment security is the prime factor of labour and employment law. Thus, with regard to the sweeping profession in Bangladesh it is pertinent to examine - to what extent the current labour laws of Bangladesh are directed towards job or employment security of sweeper? In response to the above question, *Nuna Zekic*³² replied that four elements are closely connected with 'employment security' in any establishment; those are: specific job tenure, stability of job, reasonable dismissal procedure and income security.³³ The following discussion shall shed light on the essential requisites of employment security for the sweeper and shall analyse – to what extent those requisites are followed in sweeping profession in Bangladesh:

4.1. Right to Formal Appointment Letter and Identity Card

An appointment letter can be defined as a legally binding document that confirms that an organization has offered a position to an employee and they have accepted the terms and agreement in exchange for a salary.³⁴ It is one of the first and foremost rights of every worker to get a formal appointment letter before employment and an identity card with photograph for his or her work.³⁵

³⁰ Ibid.

³¹ Note 14.

³² Assistant Professor in Labour Law, Department of Social Law and Social Policy, Tilburg University.

³³ Nuna Zekic, *Job security or employment security: What's in a name?*, 2006, European Labour Law Journal, 7(4),548-575. Available at: <https://doi.org/10.1177/201395251600700403>; accessed on 11 October 2019.

³⁴ Available at: <https://www.bayt.com/en/specialties/q/56200/what-is-quot-appointment-letter-quot-who-is-responsible-for-issue-the-appointment-letter/>; accessed on 24 June 2018.

³⁵ *Bangladesh Srama Ain* 2006, section 5.

Thus appointment letter is the first step to secure the employment. Further, details of the worker information, terms and conditions of the employment are recorded on service book.³⁶ 'No formal Letter of appointment is maintained for Master Roll and Temporary Sweepers.'³⁷ However, in case of permanent employee sweeper, the formal appointment letter and the service book is regularly maintained.³⁸

4.2. Right to Fixed Security of Tenure

In order to ensure the security of employment the tenure of the employee should be fixed and employee should be protected against any kinds of arbitrary dismissal. The employee can only be dismissed through lawful grounds. Without proper security of tenure an employee find himself or herself restricted by fear of losing his job. It gives a protection by ensuring that he cannot be victimized for exercising his functions. It is provided that in case of regular employment, the services of any one of the workers cannot just be terminated except for a 'just cause' or after a 'due process'.³⁹ Thus, an employee can be removed after fulfilling two essential requirements; 'just cause' and 'due process'. In Bangladesh no worker be dismissed except for the conviction for any 'criminal offence' or 'misconduct'.⁴⁰ The *Bangladesh Srama Ain* 2006 of Bangladesh outline just procedures in the event of dismissal from work. It is provided that order of dismissal or removal or suspension cannot be passed against a worker

³⁶ *Bangladesh Srama Ain* 2006, sections 6 and 7.

- (a) name of the worker, name of mother and father and address of the worker, (in appropriate case name of husband/ wife shall be written)
- (b) date of birth,
- (c) particulars necessary for identification,
- (d) name and address of the employer under whom previously employed, if any,
- (e) period of employment,
- (f) occupation or designation,
- (g) wages and allowance, if any,
- (h) leave availed, and
- (i) conduct of the worker.

³⁷ Note 1.

³⁸ *Ibid.*

³⁹ Available at: <http://jmbm.blogspot.com/2010/12/employee-rights-to-just-wage-security.html>; accessed on 24 June 2018.

⁴⁰ *Bangladesh Srama Ain* 2006, sections 23 and 24.

The following acts and omissions shall be treated as misconduct -

- (a) willful insubordination or disobedience, whether alone or in combination with others to any lawful or reasonable order of a superior;
- (b) theft, fraud or dishonesty in connection with the employer's business or property;
- (c) taking for giving bribe in connection with his or any other worker's employment under the employer;
- (d) habitual late attendance;
- (f) habitual breach of any law or rule or regulation applicable to the establishment;
- (g) riotous or disorderly behavior in the establishment, or any act subversive of discipline;
- (h) habitual negligence work;
- (i) habitual breach of any rule of employment, including conduct or discipline, approved by the chief Inspector;
- (j) falsifying, tampering with, damaging or causing loss of employers official records.

unless- (a) the allegations against him are recorded in writing; (b) he is given a copy thereof and not less than seven day's time to explain; (c) he is given an opportunity of being heard; (d) he is found guilty, after enquiry; (e) the employer or the manager approves of such order.⁴¹ It is further provided that a worker who is dismissed or removed on the prescribed ground⁴² shall, if his continuous service is not less than one year, be paid by the employer compensation at the rate of fourteen days wages for every completed year of service, or gratuity, if any, whichever is higher.⁴³ However the proper dismissal procedure is not followed in case of 'Master Roll and Out-sourcing Sweeper'. Arbitrary and unjustified dismissal procedure is the common phenomenon for the out-sourcing sweeper. The scenario is positive in case of permanent sweeper; proper dismissal procedure is maintained after satisfying the grounds.⁴⁴

4.3. Right to Minimum Wage

Wages means and includes all remuneration, expressed in terms of money or capable of being so expressed, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a worker in respect of his employment or of work done in such employment, and includes any other additional remuneration of the nature aforesaid which would be so payable.⁴⁵ The *Constitution of Bangladesh* in article 15 states that wages should be "reasonable" which further explained that it should be based on the principle of "from each according to his abilities, to each according to his work".⁴⁶ The minimum wages declared by the government shall be binding on all employers concerned and every worker shall be entitled to be paid wages at a rate which shall, in no case, be less than the rate of wages so declared or published.⁴⁷ Thus it is the right of every worker to get minimum wages as declared by the government. Nonetheless, the principle as enshrined in the Constitution and Labour Act with regard to providing minimum wages is not properly maintained in Master Roll and Out-sourcing Sweeper. Sweepers worked on Master Roll have complained that wages are very insufficient in comparison with their work. DSCC⁴⁸ provides daily BDT 480 to road sweeper and BDT 500 to other waste management process. Master Roll employee gets monthly BDT 10000/14250 whereas out-sourcing employee gets monthly BDT 10000 to 1320 BDT (though the amount is not fixed).

⁴¹ *Bangladesh Srama Ain* 2006, section 24.

⁴² *Bangladesh Srama Ain* 2006, section 24.

⁴³ *Bangladesh Srama Ain* 2006, section 24.

⁴⁴ Notes 1, 6, 22 and 27.

⁴⁵ *Bangladesh Srama Ain* 2006, s 2 (XLV).

⁴⁶ *Constitution of Bangladesh*, Art. 20.

⁴⁷ *Bangladesh Srama Ain* 2006, sections 140, 148 & 149.

⁴⁸ Dhaka South City Corporation.

4.4. Right to Fixed Working Hour and Interval

The maximum working hour for an adult worker shall not be more than eight hours per day or forty-eight hours per week.⁴⁹ However the working hour may be extended but shall not exceed ten hours per day or sixty hours per week.⁵⁰ If a worker works in an establishment for more than the prescribed hours in any day or week, he shall get allowance at the rate of twice his ordinary rate of basic wage and dearness allowance and ad-hoc or interim pay, if any.⁵¹ In case of women workers it is provided that no women shall, without her consent, be allowed to work in an establishment between the hours of 10.00 PM and 6.00 AM. Every worker is also entitled to a rest of one hour if he continuously works for six hours and a rest of thirty minutes for five hours.⁵² Sweepers' works on daily basis are to work more than eight hours per day whereas working hour is not fixed for the out-sourcing sweeper.⁵³ The usual working hour for Master Roll and Out-sourcing Sweeper is between 08:00 pm to 08:00 am without any kinds of extra benefit.⁵⁴ *Munna Lal Harijan*, worked on public establishment as out-sourcing basis, have claimed that sometime he has to work more than ten hours without any kinds of extra benefit. He further added that if anybody complains or refuses to do work for the extended period then he or she is threatened to be dismissed from job.⁵⁵ *Munna Dhom*, another responded from *Ganaktuli Sweeper Colony* worked on daily basis, said that works of the sweeper begin in the early morning and continues until they finish the work. Besides, Master Roll and Out-sourcing sweepers do not get any weekly leave except those who worked in public universities. However, sweeper worked on permanent basis answered positively⁵⁶ with regard to the question of 'rest and weekly leave'.⁵⁷

4.5. Right to Leave and Holiday

Chapter IX of the *Bangladesh Srama Ain* 2006 of Bangladesh enshrines provisions for the protection of any kinds of improper leaves and irregular holidays. It provides that there are five types of leaves for the workers worked in any public or private establishments, *e.g.* Casual Leave, Sick Leave, Festival Leave, Annual Leave, and Maternity Leave.⁵⁸ However it is provided that every

⁴⁹ *Bangladesh Srama Ain* 2006, sections 100 and 102.

⁵⁰ *Bangladesh Srama Ain* 2006, sections 100 and 102.

⁵¹ *Bangladesh Srama Ain* 2006, section 108.

⁵² *Bangladesh Srama Ain* 2006, section 101.

⁵³ Note 1.

⁵⁴ Note 1; Syed Lutful Kabir Chowdhury, *Traditional Profession and Livelihood: A Study on Sweeper Community*, Journal of Economics and Sustainable Development, Vol.2, No.3; available at: <https://www.thedailystar.net/news-detail-23134>; accessed on 27 September 2018; Available at: <https://www.thedailystar.net/news/the-sweepers-a-socially-excluded-community>; accessed on 27 September 2018.

⁵⁵ Munna Lal Harijan is one of the respondents of Ganaktuli Sweeper Colony. He worked in a public establishment on daily basis.

⁵⁶ 100% Permanent Sweeper (There were 15 permanent sweepers out of 80 respondents) replied that they get 'rest and weekly leave' regularly as per government rules.

⁵⁷ Note 8.

⁵⁸ *Bangladesh Srama Ain* 2006, Chapter IX.

worker is entitled to get full wages during his leaves.⁵⁹ Every worker shall be entitled to get ten days in a calendar year as casual leave,⁶⁰ fourteen days as sick leave,⁶¹ eleven days as festival leave,⁶² one day for every eighteen days as annual leave if a one year continuous service is completed,⁶³ 16 weeks or 112 days as maternity leave.⁶⁴ An adult worker employed in an establishment is entitled to get one and half days holiday in each week if he is employed in a shop or commercial establishment or industrial establishment whereas he is entitled to get one day's holiday of twenty four consecutive hours in each week if he worked in a road transport service.⁶⁵

However, the above rule is not properly maintained for Master Roll and Out-sourcing sweeper. In response to this issue 100% sweepers (The study is conducted upon 80 sweepers) expressed that they do not get any leave or holiday. They have said that irregular leave procedure is common phenomenon in their job. In addition if they want to apply for leave, they will be threatened to be dismissed from their job. Further, even they have no leave on Saturday and Friday.⁶⁶ However, aforesaid rule is only followed upon the sweepers who work on permanent basis.⁶⁷

4.6. Right to Maternity Benefit

Maternity leave with full wages is one of the basic and fundamental rights of every woman worker. This right is recognized and protected both by national and international instruments. Maternity Protection Convention 2000⁶⁸, the latest international instrument constructed through ILO C 183, affirms 14 weeks maternity leave. The Convention further suggests that 'women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two-thirds of her previous earnings or a comparable amount.'⁶⁹ The convention also creates obligation towards ratifying states by saying that it shall the responsibility of ratifying state to protect a pregnant mother from doing any duties harmful to her health and to her child.⁷⁰ It also prohibits the employers from terminating a woman during her pregnancy. In the case of *Air India v Nargesh Merza*⁷¹, Supreme Court of India quashed the service regulation framed by AIR India which had provided for the termination of services of an air hostess during her

⁵⁹ Bangladesh Srama Ain 2006, Chapter IX.

⁶⁰ Bangladesh Srama Ain 2006, section 115.

⁶¹ Bangladesh Srama Ain 2006, section 116.

⁶² Bangladesh Srama Ain 2006, section 117.

⁶³ Bangladesh Srama Ain 2006, section 118.

⁶⁴ Bangladesh Srama Ain 2006, section 46.

⁶⁵ Bangladesh Srama Ain 2006, section 103.

⁶⁶ Notes 1, 17 and 43.

⁶⁷ Note 43

⁶⁸ Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm>; Accessed on 29 September 2018.

⁶⁹ Ibid.

⁷⁰ Article 3 of ILO C 183.

⁷¹ (1981) 4 SCC 335.

pregnancy. The Court held that the regulation as most unreasonable and arbitrary course of human nature. It is not a disability but one of the natural consequences of marriage and is an immutable characteristic of married life.⁷² Right to maternity benefit is also protected through the national instruments of Bangladesh. Chapter IV of the *Bangladesh Srama Ain* 2006 gives protection of the right of maternity benefit. The Act⁷³ prohibited employer to engage any female worker during her pregnancy time. It is provided that woman workers are entitled to a leave of 16 weeks as her maternity leave.⁷⁴ Woman workers are entitled to get her full wages during her Maternity leave.⁷⁵

It is very shocking to say that Master Roll and Out-sourcing female Sweeper cannot get any maternity benefit.⁷⁶ An in-depth research was conducted in two sweeper colonies around Dhaka City where 15 female sweepers were asked about their right to maternity benefit but the answers were negative (100% respondents answered negatively).⁷⁷ However sweepers worked on permanent basis confirmed that maternity benefit is given to them regularly under Bangladesh Service Rules as government employee.⁷⁸

4.7. Right to Health and Hygiene

Cleanliness is very important for every establishment whether public or private. The *Bangladesh Srama Ain* 2006 of Bangladesh provides that 'every establishment shall be kept clean and free from effluvia arising from any drain, privy or other nuisance.'⁷⁹ It further provides that it is the duty of every establishment to remove 'dirt and refuse by sweeping or by any other effective method from the floors and benches of work-rooms and from staircases and passage and disposed of in a suitable manner'.⁸⁰ It is further added that 'disposal of waste management' should be effective through proper ways.⁸¹ This responsibility of cleanliness of any establishment is given to the 'sweeper'. But the question arises whether the establishment is concerned about their health and hygiene. Mentioning that 'right to health and hygiene' of workers is one of the major fundamental principles enshrined in the Constitution of Bangladesh.⁸² This principle, right to health and hygiene, is further elaborately defined and implemented by *Bangladesh Srama Ain* 2006.⁸³ Sweeping profession is related

⁷² Ibid.

⁷³ *Bangladesh Srama Ain* 2006, section 45.

⁷⁴ *Bangladesh Srama Ain* 2006, section 46.

⁷⁵ *Bangladesh Srama Ain* 2006, section 46.

⁷⁶ Note 1.

⁷⁷ Note 44.

⁷⁸ Rule 197(1) of Part-I of the Bangladesh Service Rules provides for permanent government servants the right to take six months' maternity leave and the Bangladesh Labour Act provides a worker with the right to take 16 weeks maternity leave.

⁷⁹ *Bangladesh Srama Ain* 2006, section 51.

⁸⁰ *Bangladesh Srama Ain* 2006, section 51.

⁸¹ *Bangladesh Srama Ain* 2006, section 54.

⁸² *Constitution of Bangladesh*, article 18.

⁸³ Available at: <http://onnorup.blogspot.com/2014/06/a-critical-analysis-of-health-hygiene.html>; accessed on 01/09/2018 "It should be a fundamental responsibility of the State to emancipate the toiling masses – the peasants and workers - and backward section of the people from all forms of

to waste management which entails ‘Removing of debris from streets, collecting solid waste, disposing and recycling waste material’⁸⁴. So during their works they always contract with ‘unhygienic materials, exhaust fumes, extreme noise, toxic substances and dust particles’⁸⁵. Thus there is ample possibility to be affected by numerous serious health problems, e.g. ‘serious infection, skin diseases, causing vomit and loss of appetite due to bad odours, inhale problems, cough, severe headache and jaundice’⁸⁶. Therefore, it is crucial to take measures for their occupational safety and health hazards.

However, safety and protection of sweepers from unhygienic condition is very alarming.⁸⁷ In 2015 an in-depth research was conducted among two sweeper colonies namely, *Agargaon Public Works Department (PWD) sweeper Colony* and *Gonoktuli sweeper colony* in Dhaka city.⁸⁸ The research investigates the actual situation of health and occupational safety of the sweepers. A total of 15 in-depth interviews, 5 focus group discussion and 8 key informant interviews were conducted. The study reported:

13% street sweepers are wearing a uniform. As a result, almost all of the time they are affected by cuts and other injuries. 40% participants reported that they had developed serious infections due to cuts by either medical equipment or other sharp objects.”⁸⁹

One of the participants stated, “We don’t put on any glove, boot or mask during the work. We rarely put uniforms...of course, we cut our fingers or legs many times. It is natural to cut or be injured ourselves if we don’t have any protective measures at our work”⁹⁰ Participants of the research⁹¹

exploitation”. This is a very important provision regarding labour’s safety in the constitution of Bangladesh. Though it is only persuasive in nature, is very weighty as it is mentioned in the supreme law of the land. Again right to life is one of the fundamental rights of people of Bangladesh. Art. 31 & 32 of The Constitution of People’s Republic of Bangladesh deal with this fundamental right. Every people of Bangladesh have this right. Chapter 6 & 7 of *Bangladesh Srama Ain* 2006 by including the provisions relating to safety at work have accepted this fundamental right. Again chapter 5 of Bangladesh Labour Act 2006 deals with health & hygiene at work. However the recent amendment of The Constitution of People’s Republic of Bangladesh burdens a moral obligation on the government of Bangladesh to ensure a healthy & safe environment for all by including Art. 18A dealing with right to healthy & safe environment. And this provision is also applicable at work.”

⁸⁴ Ashraful Kabir, Nadia Farhana, Farzana Akter, Shahana Jesmin, Ahsan Ali, *Sweeping practices, perceptions and knowledge about occupational safety and health hazards of street sweepers in Dhaka city, Bangladesh: a qualitative inquiry*, International Journal of Community Medicine and Public Health Kabir A et al. Int J Community Med Public Health. 2015 Aug;2(3):237-243.

⁸⁵ Ibid.

⁸⁶ Note 1 and 59.

⁸⁷ Ibid.

⁸⁸ Ashraful Kabir, Nadia Farhana, Farzana Akter, Shahana Jesmin, Ahsan Ali, *Sweeping practices, perceptions and knowledge about occupational safety and health hazards of street sweepers in Dhaka city, Bangladesh: a qualitative inquiry*, 2015, International Journal of Community Medicine and Public Health Kabir A et al. Int J Community Med Public Health.;2(3):237-243.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

admitted that bad odours at work is their regular practice. It causes ‘vomit and sometimes increase loss of appetite’.

However, the situation of safety measures and health hazards is better explained by giving some case studies as reported on the research article:⁹²

I smell a strong bad odour especially during the monsoon. The smell is very strong; sometimes remain intolerable. I feel weak and loose appetite. These exposures also lose my patience to co-workers ...we often get irritated with very small issue” (A female participant from IDI).

“While I sweep the street through manual brushing, it produces a heavy dark dust cycle around me. I feel that it creates difficult breathing. The concentration often gets worst during the winter (when there is no rain). What can we do except inhaling pure dust?” (A male participant from IDI).

“We don’t put on any glove, boot or mask during the work. We rarely put uniforms. ...of course, we cut our fingers or legs many times. It is natural to cut or be injured ourselves if we don’t have any protective measures at our work (A female participant from IDI).

The research also reported that sweepers have little knowledge with regard to their work related safety and health hazards. Besides the establishment, public or private, they are working on does not give proper attention about their health and safety during their working time.⁹³ As a result they regularly affected by infections, injuries, serious health diseases, vomiting and so on.⁹⁴ So it is crucial to make them aware to take safety measures during work.

5. Right to Choose Alternative Profession: Trapped on age-old Sweeping Profession

Our children do not get white collar jobs even though they have the qualifications. It would console our heart if even one of us got an official job. But unfortunately it never happens. Sweeping is the only profession, no matter whether we want to stick to it or not. Our destiny is sweeping, though this too is uncertain nowadays.⁹⁵

A sweeper in Bangladesh neither can neither change his age old sweeping profession nor can choose alternative profession.⁹⁶ This situation leads to another query that is will it lead to “forced labour”? For responding to the question we need to critically scrutinize the factors responsible for constituting ‘forced labour’.

⁹² Note 59.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Babul Das (56), a sweeper from Madarbari Shebok Colony in Chittagong; available at: <https://www.thedailystar.net/news/the-sweepers-a-socially-excluded-community>; accessed on 27 September 2018.

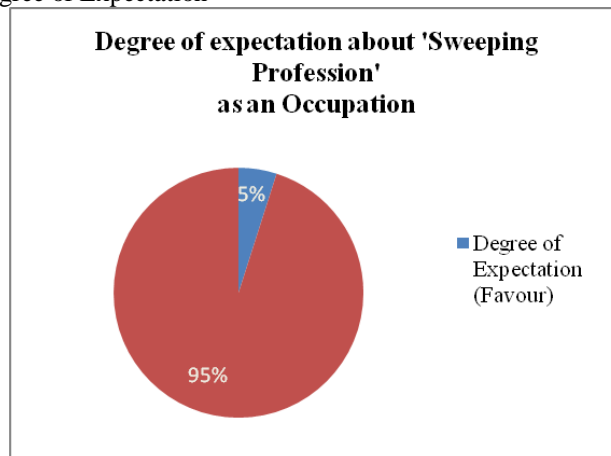
⁹⁶ Notes 1, 17, 73 and 76.

Forced labour refers to that situation where a person is compelled or forced to work or continue to work through using threat, compulsion, intimidation or any other unlawful force. Besides the above, “poverty, social exclusion and denial of human rights”⁹⁷ may lead to forced labour. ILO Forced Labour Convention, 1930 defines forced labour as:

All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.⁹⁸

The definition covered two distinct conditions of forced labour, i.e. ‘lack of consent to work’ and ‘menace of penalty’. The requirements for forced labour as found on ILO definition was further illustrated by ILO expert on 2005 entitled “A global alliance against forced labour”. The expert analyses of ILO definition by specifying some indicators of ‘forced labour’.⁹⁹ It entails birth/descent into ‘slave’ or bonded status¹⁰⁰, Physical abduction or kidnapping, sale of person into the ownership of another, physical confinement in the work location, induced indebtedness and debt bondage, deception or false promises about types and terms of work, withholding and non-payment of wages, retention of identity documents or other personal possessions”. These indicators fall under the category of ‘lack of consent to work’. ‘Lack of consent to work’ enumerate that ‘birth/descent into ‘slave’ or bonded status’ is one factor for creating forced labour.

Figure: Degree of Expectation



⁹⁷ Ruwanpura N. and Rai P., ‘*Forced Labour: Definitions, Indicators and Measurement*, vol. 142(1), pp 49-71, March.

⁹⁸ ILO Forced Labour Convention 1930, article 2.

⁹⁹ Kanchana N Ruwanpura and Pallavi Rai, ‘*Forced Labour: Definitions, Indicators and Measurement* (The above box, adapted from the ILO Global Report of 2005 entitled “A global alliance against forced labour”).

¹⁰⁰ Underlining is mine.

The above report was published by a human rights organization¹⁰¹ in the year 2014. The research was conducted among 142 respondents. It shows that among 142 respondents, only 7 respondents (5%) answered positively while rest of them negatively answered. Another field work¹⁰² exposed the scope of choosing alternative profession is very little (99% answered positively). *Dilip Das*, 50 years old working as sweeper in Bangladesh Airport, has a son who have completed his BA Degree about three years before. Finding no other option, he has recently joined as sweeper in DSCC. The scenario is almost same among all of them who tried to get any alternative profession. *Nirmol Chandra*, general secretary of *Bangladesh Harijan Oikkha Porishad*, said that they are trapped into this 'sweeping profession' as it is their only profession and now it has become their traditional job. If someone born in a sweeper family has no other choice than becoming a sweeper. Thus, from different empirical study it reveals that their 'identity or bonded status or birth'¹⁰³ is the main factor for being trapped into 'sweeping profession'.

6. Lawlessness Situation of Master Roll and Out-sourcing Sweeper

Among three categories of sweeper in Bangladesh only permanent sweepers are protected by legal instruments. They are regulated by Bangladesh Government Service Rules, the National Pay-scale. These categories of sweeper are considered as government employee. They work on permanent basis and are paid under the 20th grade of national pay-scale. However, legal protection of Master Roll and Out-sourcing is negative. Their employment rights are neither protected under Bangladesh Government Service Rules nor the *Bangladesh Srama Ain*, 2006.¹⁰⁴ Thus, low salary, insecure employment, unjustified dismissal procedure, inadequate benefits, irregular leave and rest are the common phenomenon for the Master Roll and Out-sourcing sweepers. Mentioning that *Bangladesh Srama Ain* 2006 is the only law in Bangladesh that has consolidated all laws for the protection of workers' rights.

In this connection it is a pertinent question, can the sweepers claim the application of labour standard as contained in the *Bangladesh Srama Ain*? The answer is negative with respect to Master Roll and Out-sourcing sweepers as they cannot claim protection under the *Bangladesh Srama Ain* 2006. Because the Act is applicable¹⁰⁵ only for 'worker'¹⁰⁶ but the Master Roll and Out-

¹⁰¹ Note 1.

¹⁰² Note 45.

¹⁰³ ILO Global Report of 2005 entitled "A global alliance against forced labour"

¹⁰⁴ Note 1.

¹⁰⁵ *Bangladesh Srama Ain* 2006, preamble: An Act to consolidate and amend the laws relating to employment of labour, relations between workers and employers, determination of minimum wage, payment of wages and compensation for injuries to workers, formation of trade unions,

sourcing sweepers are not fall under the category of ‘worker’ as defined the *Bangladesh Srama Ain* 2006. Thus, this lawlessness situation leads a miserable condition of the Master Roll and Out-sourcing sweeper in their professional field.

7. Concluding Remarks with Recommendations

‘Right’ in ‘work’ is fundamental for the protection of worker or employee from any kinds of abuse, arbitrariness, negligent and deprivation and it also ensures a good relationship between worker and employer. Universal Declaration of Human Rights recognized this right in article 23 by the fashion of everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. Further *International Covenant on Economic, Social and Cultural Rights* 1966 creates obligation towards state parties to recognize the right to work as one of the socio-economic rights. The Convention further adds that right to work includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.¹⁰⁷ ‘Right to Work’ is recognized as one of the prime fundamental principles in the Constitution of Bangladesh. Moreover, to protect the rights of worker the *Bangladesh Srama Ain* 2006 was enacted in 2006. So, the workers right is protected under *Bangladesh Srama Ain* 2006 and other national laws. However the real scenario as to the application of labour standards with regard to the sweeping profession does not fulfill minimum requirement as to their work. The main problem is that only the sweepers worked on permanent basis can seek protection under Government Rules but rest of the categories of sweeper cannot get any legal protection. Moreover, labour standard is not followed properly in ‘sweeping profession’. It is to be noted that Sweeping profession is categorised into three distinct groups, e.g., Master Roll Sweeper, Out-sourcing Sweeper and Permanent Sweeper. Labour standards are hardly followed with regard to the Master Roll and Out-sourcing sweepers. Formal appointment letter, proper dismissal procedure, weekly leave, maternity benefit, standard work time etc are absent for Master Roll and Out-sourcing sweepers. However, sweepers worked on permanent basis are enjoying almost all types of benefit in accordance with the rules as provided by government policy and the *Bangladesh Srama Ain* 2006.

raising and settlement of industrial disputes, health, safety, welfare and working conditions of workers, and apprenticeship and matters ancillary thereto.

¹⁰⁶ ‘worker’ means any person including an apprentice employed in any establishment or industry, either directly or through a contractor, to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include a person employed mainly in a managerial or administrative capacity.

¹⁰⁷ *Covenant on Economic, Social and Cultural Rights* 1966, article 6.

In this context, the government of Bangladesh must ensure the labour standards in 'sweeping profession'. In this regard, the study has made some recommendations for the implementation of their labour standard to secure their employment right:

- 1) The sweepers are working and spending most of their working hours at the dump site, and in unhygienic condition. So, much attention as to their health and safety must be given by providing necessary safety appliance.
- 2) Sweepers are continued to work with very low paid jobs in Bangladesh. Thus, minimum wages and payment should be guaranteed .
- 3) To ensure better access to employment, there should be quotas in public employment for sweeper community.
- 4) To improve the working conditions for the sweepers, greater opportunities must be created to have the freedom of profession.
- 5) To ensure equal opportunities to move into alternative forms of employment.
- 6) To take proper steps for amending the definition of 'worker' as contained in *Bangladesh Srama Ain* 2006 so as to master roll and out-sourcing sweeper can seek their protection under said *Ain*.
- 7) To strengthen legal provisions relating to trade union and collective bargaining for the sweeping workers, especially for master roll and out-sourcing sweeper.
- 8) To take proper steps for the elimination of discrimination at the workplaces among permanent, master-roll and out-sourcing sweepers.
- 9) To remove hardship to sweeping workers', especially for the master roll and out-sourcing sweeper, entitlements with respect to certain benefits, like minimum wages, the security of tenure, maternity benefit, right to leave, and so on.