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**The Socio-Legal Implications of Women's Work in the
Informal Sector: A Case Study of Women Domestic
Workers in Pakistan**

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Abstract

The informal sector of economy is a major source of employment in Developing countries such as Pakistan.¹ Work opportunities in the informal sector play an important role in providing lively-hood to the poor, unskilled or semi-skilled, less educated and illiterate men and women workers in the society. There has been a significant change in the informal labour market with more women working for wages. However women remain amongst the lower earners of society, as despite performing the same tasks they are paid less compared to their male counterparts and are mostly engaged in part time jobs. Domestic service is one such category in the informal employment sector which provides jobs to women in large numbers. Yet of the eleven labour policies framed by various governments since the creation of Pakistan in 1947 none has addressed the issue of domestic workers, nor are domestic workers covered under the general labour laws of the country.² In the light of this situation the paper attempts to deconstruct the role of law in empowering women domestic workers by exploring the relationship between law, gender and empowerment in a plural legal society.

Keywords

Feminist Legal Theory, Legal Pluralism, Islamic Feminist Perspectives, Women, Pakistan, Domestic Workers, Empowerment.

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1. Introduction

Legal centralist approaches create an image that formal codified law is the only tool for enforcing rights and protecting the vulnerable.³ However this portrayal of law contradicts the ground realities. Law does not appear only in the form of a set of codified rules but also as informal rules such as customary norms and religious traditions which shape and influence the process of implementation of formal laws. This paper seeks to explore the limits of black letter law as an effective process and mechanism of empowerment for women domestic workers. I argue that recognition and implementation of equal rights for women domestic workers in the workplace would only be possible if we engage with both legal and non-legal strategies.

The first section provides an analytical overview of domestic service in Pakistan. The second section discusses in detail the conceptual framework of this paper, which is based on a non-essentialist perspective that questions the efficacy of law as a tool for empowering women domestic workers in Pakistan. It examines the feminist theories of law 'as a process' and law 'as a socio-cultural construct' combined with studies of legal pluralism and Islamic feminist perspectives on women's work in the light of principal sources of Islamic law. This framework establishes the linkage between these discussions and my main research hypothesis i.e., deconstructing the role of law in empowering women domestic workers by exploring the relationship between law and gender in a plural legal society.

The information provided in this paper is drawn from empirical work carried out for my doctoral research in two urban settings in Pakistan.⁴ In the third section, based on the data collected, the paper attempts to establish linkages between findings from the field and the theoretical framework. It emphasises that the issue of women domestic workers can be addressed in a more effective way, by looking into the lived realities of women workers' lives through listening to their voices and experiences.⁵ The section further considers some of the key issues that have emerged from interviews with women domestic workers, employers, activists, academics/researchers and government officials.

The conclusion suggests a way forward in the form of using both legal and non-legal strategies for improving the position of women domestic workers in Pakistan.

2. Domestic Workers in Pakistan: An Overview

Domestic work around the globe is considered as an under-valued and underpaid activity performed by the disadvantaged social groups of society. It is perceived as work with low economic value and an extension of unpaid household duties that hardly get any recognition for the work performed. Traditionally domestic work in others' households has remained a principal way of earning a living for poor women. The vast literature on domestic work (Ehrenreich, B. and Hochschild, A. R., 2003; Silvera, M., 1989; Anderson, B., 1993; Parrenas, R., 2001; Sanjek, R. and Colen, S., 1990; Chang, G., 2000; Sotelo, P. H., 2001; Widge, A., 1995; Christine B. N., 1998; Jacklyn, C., 1989; Langewin, L. and Belleau, M. C., 2000) demonstrates that across the north-south divide it is mostly women who are involved in domestic service, and it is this gendered nature of the work, which underestimates domestic service as having no value at all. It also illustrates the roles of gender, class, race and ethnicity in placing domestic service at the bottom of the employment ladder. Women domestic workers (who migrate to these countries in search of jobs and better living) are employed by not only the affluent families in the developed world but they are also found in great numbers working in their home countries particularly in developing countries for the middle class and the upper echelons of society. It is interesting to note that all studies irrespective of the country of origin point to the inadequacy of a simple legal response to address the situation of women domestic workers. This appears to be the case even in the countries where legal systems are much well developed. Hence it can be argued that the problem is socio-legal, therefore all solutions must look beyond black letter law.

Pakistan is amongst those developing countries where most households employ women domestic workers. Domestic service is an unregulated, unorganised and undervalued form of employment. Domestic workers are not included in the definition of the 'worker' in labour legislation.⁶ There is no law to regulate the relationship between employer and the domestic worker in Pakistan, thus a domestic worker does not exist as a person in labour law. As a result domestic workers have no legal rights to a weekly rest day, maternity leave and public holidays. In theory they can bring a civil/criminal action but in the absence of adequate labour law they do not engage with the law or with the state on a daily basis in their lives, nor can they think of accessing courts due to their socio economic situation in the

country. In the absence of any labour legislative framework, women domestic workers are not able to claim any rights against their employers. There is also no specific complaint procedure available under the labour law through which a domestic worker facing abuse could lodge a complaint. Domestic workers do not enjoy the same rights as the industrial workers, technical workers, sales persons and others in the informal employment sector, who are given protection under the labour laws of the country. In the absence of any legal framework there is hardly any case law available specifically on domestic workers in Pakistan. Only recently two cases of abuse of child domestic labour have been reported in the press.⁷ In both the cases two girl children became victim of abuse due to indebtedness of their families to landlords. Only one case has been filed in the Supreme Court of Pakistan with the support of a human rights organisation, the other family has not even been able to register a case with the police. These cases highlight the limits of law as a tool for empowerment.

Due to the existence of class hierarchies in the Pakistani society it is extremely difficult to challenge if both parties are not of the same socio economic status. As employers in comparison to women in domestic service are in a privileged position they easily flout the law by using their money and social status, thus a probable explanation for non-registration at the police station in one of the above cases. Such cases also draw attention to the need for support structures without which it is unlikely that law alone will provide any protection against exploitative conditions of work.

There are only oral agreements and no written contractual arrangements between the employer and the employee. Domestic service in Pakistan is also associated with bonded labour.⁸ Families who have debts to pay to landlords in rural areas are also engaged in domestic service, to pay off their family debts. In this form of service, workers not only surrender their labour but also all control over their lives. It is for the landlord to decide who is going to work for him and he may send the domestic worker to his relatives or to other members of the family. In such situations women domestic workers, especially young girls are in a dangerous situation as they often become victims of sexual abuse.

Jobs are mostly acquired through friends, community or family members working as domestics in other households. In the case of global/migrant domestic workers we find a network of employment agencies helping women find jobs, thus creating a labour market and some standardization of jobs with respect to wages, working hours and tasks. In Pakistan any such network of employment agencies is almost non-existent, therefore domestic workers have to find jobs on their own or depend on friends and kin to find jobs for them.

Women domestic workers are employed as full-time, part-time or live-in domestic workers. The wage structure varies according to the localities where they work, the economic status of the employer and the nature of jobs they perform. Those who work for upper class families are slightly better paid as compared to those who work for middle-class families. In Pakistan, hiring of women domestic workers also represents the reinforcement and replication of gender inequalities, for instance women domestic workers are given less than half the wages that male workers in the same occupation receive. A male cook, cleaner or a guard get a higher salary as compared to a woman domestic worker doing the same work. Similarly a male domestic worker would not do any extra work whereas a woman though hired for a single job, would be expected to undertake additional chores.

As domestic work includes the traditional female roles, it is also not recognised as a 'job'. This gender bias and inequality of treatment has also been discussed by (Rollins 1985, p. 23) who argues that '*the personal nature of this relationship partly develops from the fact that the work done by domestic is a work which could otherwise be done by the employer herself.*' The responsibilities assigned to domestic workers are always seen as 'women's work' that is passed on from a woman to a waged worker. This relationship between the employers and their working class domestic workers shows how these privileged women exploit their domestic servants. It clearly demonstrates that women from the upper or middle classes turn a blind eye towards a system that creates class hierarchies and reinforces patriarchy. By shifting their responsibilities to other women they reinforce gender stereo-types of housework and thus escape some of the challenges of patriarchy by using the labour of women who belong to the lowest rungs of society.

It is also interesting to note that domestic service stands at the boundary between the public and private sphere. The public sphere includes waged work, labour market and the institutions whereas the private consists of the home linked with kin and family. The domestic workers provide waged work but within the context of the household. For them the private territory of the employer counts as public domain.

As domestics work within the privacy of a home, it has also become an excuse for the state to not interfere in the so-called 'private sphere'. This division between the personal and the public adds to the vulnerability of women domestic workers because their work is a hidden form of employment performed within the four walls of other households, which leads to their isolation and invisibility. This dichotomy further leads to the devaluation of work performed within the private sphere.

In Pakistan there are various social classes and there is much disparity among these classes. The unequal treatment faced by women domestic workers is an outcome of class discrimination and an integral part of the patriarchal structures of the society. These women belong to the lower working class and are looked down upon in the society. They are expected to perform jobs that are considered menial. These workers are expected to work in a certain way and receive a certain type of treatment, which most people think is not wrong. Individually there may be many examples of charitable treatment, such as providing them with enough food or clothing, helping them to send their children to schools, and financial help in case of sickness, emergency or mishap. However, when it comes to their well-being in an organised manner (either in the form of formal job contracts or under any law) people are usually sceptical. An obvious reason is that the upper class does not want their workers to be aware of their rights or to be protected by law, because they fear that awareness about their rights and legal cover might encourage their uprising against the rich and the powerful. Secondly it is a matter of conflict of interest, because if this sector is regularised and legal protection is given to these workers, the upper classes will not be able to use their services by paying meagre salaries, nor would domestic workers be at the disposal of employers who could throw them out of jobs whenever they want.

Last but not the least there are no organisational support structures available for them and as a result their bargaining abilities are inadequate and they have a very limited or almost no choice but to work according to the terms and conditions as laid down by the employers. To empower women domestic workers in Pakistan collective action and more concerted efforts in terms of networking and organising them are needed. There are women organisations and unions in other employment sectors including unions of industrial workers, women in fisheries etc, therefore setting up organisations for women in domestic service would not be an exception.⁹

3. Feminist Theoretical Perspectives on Gender, Law and Empowerment

In this paper I attempt to engage in a theoretical discussion to critique law as a tool for empowering women domestic workers in Pakistan. In my work I take the position that law is not just a set of rules, it is a more complicated discourse and we need to reconsider the role of law to find out what factors are at play, which limit domestic workers' scope for legal action, why women domestic workers labour is under-valued and unrecognised, what future strategies could be adopted for bringing social change in the case of women domestic workers and to what extent could law be an effective measure in bringing empowerment to women domestic workers in Pakistan? I have used Nancy Fraser's 'perspective dualism', Carol Smart's critique of law as a 'site for discursive struggle' and Martha Nussbaum's 'capabilities' approach to address and analyse these questions.

Fraser (1997) in her perspectival dualism or theory of injustice¹⁰ classifies injustice into misrecognition or cultural/symbolic injustice and mal-distribution or socio-economic injustice. She argues that "*cultural or symbolic injustice is rooted in patterns of cultural representation, interpretation and communication which could either be in the shape of cultural domination, non-recognition and disrespect being routinely maligned or disparaged in stereotypic public cultural representations and/or in every-day life interactions*" (Fraser 1997, pp. 11-39). For her second classification of mal-distribution or socio-economic injustice she considers that it is present in the form of "*exploitation of labour, economic marginalization and denial of an adequate material standard of living*". (Fraser 1997, p. 12).

I use this classification of injustice in the context of misrecognition of women domestic workers' work which does not receive any recognition by the law as well as by the society. As discussed in the previous section their work remains undervalued and underpaid because it is performed by women and considered to be an extension of unpaid domestic chores which in any case are associated with and considered to be the sole responsibility of women. Thus misrecognition reflects cultural stereotype of

women's work and its gendered nature. This further leads to injustice to women domestic workers who are deprived of not just the recognition of their contribution to family incomes but also the respect and dignity of their labour as domestic work is often associated with 'dirty work' or a menial job.

Fraser's second classification of mal-distribution or socio-economic injustice can be applied the way women domestic workers' labour is exploited in terms of poor wages they receive which are even below the minimum wage standard, long working hours, lack of job security and absence of any other protective measures such as social security, maternity leave etc. Socio-economic injustice is also clearly visible from their poor living conditions in which they are hardly able to provide a square meal to their children let alone proper housing, education and health facilities.

Smart (1989), considers law as a site for discursive struggle which must take into account the political, cultural, and economic aspects of a society that affect women's lives. Smart argues that law is not the only and primary site of this discursive struggle, rather it is one of the many other sites where such struggle takes place over the meaning of equality and liberty, political agendas, and affirmative action in relation to the socio-legal status of women. Smart (1989) is of the view that law is gendered in its vision and practice. She critically examines how law constitutes gender and becomes a *site* in which gendered positions and identities are articulated.

Smart advises us to decentre law by not according so much power to it as in her words: *'There are other power structures operating at the same time for which law alone is not sufficient. For example the issue of women's low pay cannot be resolved by achieving equality provisions for equal wages in law unless we address this issue in a wider context of segregation in job markets, racism, division of public/private and undervaluation of women's work.'* (Smart 1989, p. 165) However she does not suggest a complete disengagement from law but wants us to look into *'other non legal strategies and local struggles'* rather than simply focusing on law reform.

Nussbaum (2000) like Smart while developing her theory of 'human capabilities' ¹¹ argues that *'all too often women are not treated as ends in their own right, persons with a dignity that deserves respect from laws and institutions. Instead they are treated as mere instruments of the ends of others-reproducers, care givers, sexual outlets and agents of a family's general prosperity Sometimes this instrumental value is strongly positive; sometimes it may actually be negative'* (Nussbaum 2000, p. 2). However Nussbaum's approach is criticized for its failure to address distributional issues and mechanisms for implementation as it focuses on only equality of capability and not equality of resources such as income and wealth.

In the context of Pakistan, feminist legal scholars such as (Ali 1997, pp198-223, Jilani 1998, pp 96-107 and Zia 1995, pp 73-82) have attempted to expose the limits of law. They are of the view that neither litigation nor legal reforms have been able to deliver gender justice. Ali (1997) assesses the limits of law as an effective tool for empowering women by using the example of a legal literacy course run for women in Pakistan. The course participants found the course to be useful in terms of raising awareness about laws, but at the same time they were conscious of the fact that despite having the knowledge and awareness of laws women still have to follow the status quo and were unable to use it for their empowerment. She is of the view that it could be gauged from the responses of the course participants that formal laws can only be effectively used for the advantage of women if a 'multi-pronged hybrid' approach is used. She further argues that the presence of religious and customary norms and the public/private dichotomy in a plural legal society like Pakistan hinders women's access to justice through courts impairing the use of formal law as an effective mechanism for empowerment.

Jilani (1998) is of the view that law-making process and its implementation has been carried out through institutions that have always remained male dominated whether it is the legislature, police or judiciary. These institutions have always served the interests of men and protected patriarchal privilege, thus access to justice and implementation of laws has always been difficult for women in Pakistan. Despite the dramatic increase in the number of women in parliament and local government every effort is made to silence women's voices in these law and policy making forums. The male face of law, Jilani insists, should not preclude women from using it and for the application of law social institutions need to be changed. She is of the view that if law is made to overcome injustice then social institutions should not be able to override it by appealing to social norms and values or religion.

Zia (1995) presents the view that as most of the legislators belong to the feudal, industrial, military and bureaucratic backgrounds they have the power to control and implement the law. Any attempt to ensure minorities' rights is viewed by these powerful groups as a potential threat to the interests of the ruling elite. This situation raises further doubts about the effectiveness of law as a tool for empowerment because any effort to protect women domestic workers' rights under the law would be considered in direct conflict with the interests of the powerful ruling elite.

In the light of above perspectives on law I would now discuss the Pakistan constitutional provisions. The 1973 constitution guarantees women's legal equality with men. Article 25 of the constitution specifically lays down that all citizens are equal before law and are entitled to equal protection of law and that "There shall be no discrimination on grounds of sex alone." The two phrases aim at prohibiting arbitrary distinctions. In addition to Article 25 there are other constitutional provisions that permit the state to adopt affirmative action measures that could help women in gaining meaningful equality with men. Article 34 provides that the state must take steps to ensure full participation of women in all spheres of life. Article 35 lays down responsibility on the state to protect the family, the marriage, the mother and the child. Article 37 (e) provides that the state shall make provisions for secure and humane conditions of work, ensuring that women and children are not employed in professions unsuited for their age and sex, and for maternity benefits for women in employment. Article 27 lays down that "no citizen otherwise qualified shall be discriminated in the services of Pakistan on the grounds of race, religion, caste, sex, residence or place of birth... and posts may be reserved to secure adequate representation in the services."

It is interesting to note that the courts in Pakistan have given favourable decisions while deciding cases in which equality provisions on women's rights in employment matters were invoked for instance *Naseem Firdous v. Punjab Small Industries Corporation* tested the application of the equality norm laid out in article 25 of the Constitution of Pakistan in conjunction with article 27 that safeguards against discrimination in services. The petitioner, an employee of Punjab Small Industries Corporation was promoted to the position of Assistant Director (Design). Later she was prevented from applying for the position of Director in the same department as the advertisement was restricted to 'male only' applicants. The plea of the employers was that the position of Director was essentially a 'male' job; this statement was made regardless of the fact that the petitioner, a woman was already performing that very job for close to a decade. The court declared the justification of article 27 as conflicting with the equality article of the constitution and hence invalid/illegal.¹²

Ali and Shahid (2006) are of the view that only a handful of women have been able to access courts whereas for the majority of women, due to low literacy rate, poverty, customs and cultural pressures and the complicated litigation process access to courts is not an easy route to secure their rights. Very few women come into direct contact with the legal system, as most of them neither have an awareness of their rights, nor do they have sufficient resources in terms of finances and time to invest in the existing legal system. In their view 'the constitutional cases in which discriminatory practices were challenged in no way represent a norm followed by most women workers in Pakistan, but it does suggest that at least formal law is being used'. (Ali and Shahid 2006, p.186).

A perusal of Labour legislation in Pakistan also suggests that domestic workers are not given any protection under labour legislation. The four basic labour laws 1) The Payment of Wages Act 1936, 2) The Maternity Benefit Ordinance, 1958, 3) The Factories Act 1938, 4) The Shops and Establishment Ordinance 1961, 5) The West Pakistan Industrial and Commercial Employment (Standing Order) Amendment Act 1974 do not cover contract workers, casual workers, piece-rated workers, the self-employed (home-based or otherwise) workers in domestic service and agricultural workers.¹³ These categories are neither covered in the industrial or commercial sector nor counted in the services sector. Although the Wages Act 1937 uses the term "worker" which has a neutral meaning being defined as any person (without any reference to any particular sex) yet male and female workers in Pakistan still do not receive equal treatment. The remuneration is not based on evaluation of the content of work rather it is based on the sex that performs work. In other words the universal principle of equal remuneration for work of equal value is not followed in Pakistan.

The discussion thus far suggests that laws and policies on their own are not sufficient as legislation can be easily evaded by the powerful. Similarly apparently neutral legislation may have gendered implications. Law is present in theory, but when it comes to women we see that either it discriminates against women or simply ignores certain categories of employment by not including them in the

definition of the 'worker' itself. The law generally covers direct discrimination however indirect discrimination also exists in the form of imposing such conditions that may appear to be gender neutral but could be discriminatory for one sex if applied.¹⁴ Any proposal for law reform therefore must move beyond the idea of merely incorporating equality provisions. We need to focus on law as a discourse in conjunction with other socio-economic and political interventions so that domestic workers in Pakistan can use this law as a tool for empowerment for protection of their rights.

3.1. Islamic Perspectives on Women's Work

I would like to mention here that though much of the theoretical framework of this paper is based on the information provided by feminist legal scholarship, but as this research is carried out in an Islamic country where religion plays a significant role on women's lives, I therefore in my quest for assessing the role of law would discuss the phenomenon of women and work within the Islamic framework. I support my argument by using Quranic verses, Ahadith (traditions) which are the two primary sources of Islamic law.¹⁵ I would also use instances from Islamic history to analyse the position of women in the early days of Islam. The theoretical discussion on Islamic perspectives of women's work is then used in relation to women domestic workers by analysing gender relations within family, workplace and society. It is therefore pertinent to explore the extent to which a legal framework constructed in the name of Islam upholds and implements Islamic notions of dignity of labour, equity and justice with regard to women in domestic service.

The Qur'an and the Ahadith do not prevent women from engaging in gainful employment. The Qur'an in chapter 4 verse 32 declares that women have every right over their earnings and over their possessions: *"And in no wise covet those things in which Allah hath bestowed His gifts more freely on some of you than on others; to men is allotted what they earn, and to women, what they earn; but ask Allah of His bounty for Allah hath full knowledge of all things."* This verse gives women the right to earn and whatever she earns belongs to her. She can keep the fruits of her labour and is free to invest or spend it in any way she wishes. The idea behind this verse is that women and men should be compensated by the work they perform regardless of gender. Similarly a woman can even charge her husband for nursing her own infants. The Qur'an in chapter 2, verse 233 says: *'And the mothers may nurse their children for two whole years, if they wish to complete the period of nursing; and it is incumbent upon him who has begotten the child to provide in a fair manner for their sustenance and clothing'*. This verse implies that the decision of weaning the child for two years is an option for the mother not a command. It also indicates that upbringing of a child is not just a mother's responsibility because if she does not want to feed the baby it is the father who has to make some alternate arrangement. Besides, in the economic sphere Islam gives women the right to ownership of property and control of wealth. Qur'an in chapter 7, verse 4 also clearly lays down her share in inheritance: *'Unto the men belongeth a share of that which parents and kindred leave, and unto the women share of that which parents and near kindred leave'*.

The Hadith literature and recorded stories of the life of the Prophet Muhammad are replete with women leaders, jurists, scholars and women who participated fully in public life. Khadija, the first wife of the Prophet and the first convert to Islam, was a successful trader who helped the poor, freed slaves and spread the message of Islam. She first employed the Prophet as her representative to carry out her trade and then asked him to marry her. Her wealth and business property gave the Prophet ease of circumstances and freedom from the cares of daily life to accomplish his mission (Siddiqui 1989, p53). After her death, the Prophet married Ayesha Siddiqah, a formidable young woman who led a Muslim army into battle. She also contributed towards the collection of Ahadith as many of the Hadith were reported by her. She also exerted her strong political influence to ensure that her father could become the caliph after the death of the Prophet. Other women including Al-Shifa bint Abdullah was the chief inspector of the Medina market and Umm Waraqa bint Naulal was appointed as an imam by the Prophet (Hussain 1997, p. 228). These examples reflect that the wives of the Prophet and other Muslim women were dynamic, influential, and enterprising members of the community, and fully involved in Muslim public affairs. They were vocal about their status and demanded equal economic and socio-political rights mainly in the areas of inheritance, participation in warfare and booty, and personal (marital) relations.

Afshar (1996) argues that if fundamentalism is about returning to this golden age of Islam then we should not forget how influential women were at that time, the way they participated in the public domain. These examples raise questions such as why women in the present age are not given the same rights and why are they considered inferior to men using religious argument? Why is there a wide gap

between the egalitarian principles of Islam and the lived realities of women in Muslim societies and finally, despite clear and unequivocal support for male-female equity, why Muslim women today are denied some of the basic rights such as education, health, employment, participation in politics and public life. This gap between the actual teachings and lived realities has emerged as argued by Ali because the Qur'anic verses have in most of the cases been applied without considering the socio cultural context in which these verses were revealed 1400 years ago. Another obvious reason is that most interpretations of the *Qur'an* represent a male perspective and were done by male religious scholars who were more interested in protecting their own vested interests.

Another important issue that needs to be discussed is the concept of dignity of labour and duties/responsibilities in Islam with reference to employer and employee. The principle of dignity of labour has been laid down in the Qur'an in unequivocal terms. Anyone who does not work should not hope to reap any fruit and that the worker should have his/her full reward: The Qur'an in chapter 53 verses 39-41 says: *"That man shall have nothing but what he strives for: and that his striving will soon be seen. Then he will be rewarded for it with the fullest reward"*. Again in chapter 21, verse 94 the Qur'an says *"So whoever does good works and is a believer, there shall be no denying of his effort, and we surely write (it) down for him"*. Life of the Prophet Mohammad is a living example of the dignity of labour as he sets the example of personally performing all his household chores. He never despised any work, however humble, notwithstanding the dignity of his position as Prophet, and as a leader. He thus demonstrated through his personal example that all kind of work is dignified and there is no difference between work carried out in the private or public sphere.

Equal importance is given to regulate the relations between a labourer and his employer on terms of equality. Paying workers in domestic service their wages on time and to treat them with fairness comes under the category of *Faraiz* (obligation) i.e. a compulsory duty. Similarly both are considered as two contracting parties, in which the employer is as much bound by the terms of the agreement as the worker. The Prophet laid down a general law relating to contracts saying:

'Muslims shall be bound by the conditions that they make.' (Bukhari 37: 14)

'Allah says: There are three persons whose adversary in dispute I shall be on the day of Resurrection: a person who makes a promise in My name then acts unfaithfully, and a person who sells a free person then devours his price, and a person who employs a servant and receives fully the labour due from him then he does not pay his remuneration.' (Bukhari 34:106)

'No service carried with it any indignity, so much so that it was recommended that the servant may eat on the same table with his master.' (Bukhari 49:18)

An example of paying remuneration to the employee is when Umar ibn-al-Kithab was appointed as a collector by the Prophet and offered remuneration, Umar refused to take it saying that he did not stand in need of it. The Prophet, however, told him to accept it and then give it away in charity if he liked. (Bukhari 94:17) The principle was thus laid down that every employee, every worker and every labourer was entitled to get the remuneration. Simultaneously it is expected that workers will be faithful and honest towards their employers. The Qur'an wants individuals to be trustworthy: The Qur'an in chapter 8 verse 27 says:

'Do not embezzle what has been entrusted to you'

It may apply not only to an item entrusted to someone for safe-keeping but also to domestic workers who are given the charge of housekeeping by their employers. It implies that Islam gives importance not just to rights or entitlements but it also stresses upon duties and obligations. Examples cited above underpin the importance of a humane relationship between employer and employee and also pose a question for Islamic feminists to interrogate why these principles are ignored in Muslim countries like Pakistan that derive their constitutional and legislative basis from religion.

3.2. Gender, Power and Legal Pluralism in Pakistan and its Impact on Women's Work¹⁶

Griffiths(1985), defines legal pluralism as '*that state of affairs, for any field, in which behaviour pursuant to more than one legal order occurs*'. These normative orders in her view are as much law as those which are the part of the formal state system (Griffiths 1985, pp.1-55). Griffiths is more in line with Falk-Moore's description of legal pluralism. In Falk-Moore's view law should not be seen in isolation rather it should be seen in the context of society and culture where it exists in the form of customs and rules which have their own ways of inducing compliance. She uses the term 'semi autonomous social fields', to describe multiple systems of orderings in complex societies and refutes the legal centralist claim that only state law has the force to ensure compliance (Falk-Moore 1973, pp. 719-746).

Pakistan is a country where plural legal norms exist together with patriarchal power structures that deeply control women's lives. Law does not always exist in the form of a black letter law as there are other informal sets of rules/laws that appear in the form of religious and cultural norms or can be an unwritten law that takes the shape of socio economic pressure. Legal pluralism is therefore a relevant tool for analysis of law in the context of women domestic workers. Plural legal system in Pakistan operates in the form of formal state law and informal customary practices and religious norms. In reality these formal and informal legal arenas are almost exclusively the domain of the powerful. The powerful frame state laws that are discriminatory to women, misinterpret the religious law for their own vested interests and use customary norms for subordination of women for instance despite the equality provisions of the Constitution and some protective legislation, gender biased laws were passed from time to time by the state.¹⁷

Ali and Arif (1998) have in their study explored the presence of legal pluralism in Pakistan. This study demonstrates the existence and impact of plural legal norms on women's lives in Pakistan. They discuss the impact of parallel, dispute resolution systems/forums both at the formal state level under special laws as well as at the informal level under customary practices. They are of the view that the implications and consequences of this plurality are more detrimental for women as ambit of laws such as the *Muslim Family Laws Ordinance 1961* and *Family Law Courts Act* have not been extended to Provincially Administered Tribal Areas (Ali and Arif 1998, pp. 48-65). Moreover informal dispute resolution forums represent the interests of male elite therefore it is highly unlikely that women's complaints would be sympathetically heard.

Following the definition of legal pluralism as given by Falk-Moore,(1973) the present study on women domestic workers observes that in the case of women domestic workers the 'others household' is the semi autonomous social field where plurality of norms exist in the shape of gender difference, class hierarchies and patriarchal power relations due to which statutory regulations have had little impact on women's rights and in improving their work conditions. With legal pluralism as a framework for analysis I argue that in the presence of these deeply entrenched practices legislation would fail to provide any protection to women in domestic service. We have seen that so far the formal legal system in Pakistan has not provided the vast majority of disadvantaged women their rights because of the non-application of Islamic as well as the formal legal norms in practice. This further raises the question how yet another set of laws will help in improving the position of women domestic workers in Pakistan.

Plurality of norms also appears the way patriarchal power relations operate in Pakistan. Men are supposed to be the providers and maintainers of women. If a woman goes out of the house to earn money it reflects adversely on male members of the household who are perceived to be too incompetent and not 'men' enough to support their women folk (Khattak and Sayeed 2000, p. 46). Although there is a visible change in the role of women with more women entering the public sphere, yet women are considered as supplementary earners and considered subordinate to men. Occupational role of a woman is not considered as the primary role that she has to play. Her roles as a mother and wife are considered as her main responsibility. Within the cultural norms of Pakistani society, particularly rural Pakistan, men's work is still more valued as compared to women's work. Women are made to believe that whatever they do for the family is their responsibility or duty. They should not expect any recognition or remuneration for it whether in the form of monetary benefit or otherwise. The general trend among working class women is of underestimation of the value of their work or input towards the family. The same minimisation of individual self by women is found by Patel (2000) in her study of women's property rights in India. She is of the view that women do not identify with the notion that they are entitled to a share in parental property. Women still consider men as the breadwinners and heads of household and therefore in their perception only what men do is valuable

both socially and economically. In other words while employment appears to help women meet their daily needs, it maintains the status quo and has made little change in women's subordinate position. (Patel 2000, p. 172)

In cases where women are sole earners and men are not earning a single penny either due to illness, joblessness, or in some cases, drug addiction and laziness, they are still considered to be the head of the household. As a result incidence of female-headed household goes un-recognised and undercounted.¹⁸ The concept of head of household is used more as a social construct than one involving any monetary connotations.

Last but not the least, due to the existence of strong patriarchal norms the concept of division of labour between a man and woman is still not acceptable. Although mostly due to economic reasons women have come out of their homes to support men and to share their economic burden, in return women do not get the same support at home for domestic chores. There is hardly any attitudinal change amongst men and this trend of non-cooperation exists across social and class boundaries.

I therefore argue that formal law alone cannot be a source of empowerment of women and cannot bring a social change, unless it acknowledges the existence of other plural legal frameworks and social power relations. It also cannot as a simple set of rules bring equality and remove all sorts of disparities in the presence of the deeper injustices that exist in the form of discriminatory customary practices, misinterpreted religious norms, patriarchy, gender, class and socio-economic differences. Due to the presence and strong influence of plural legal norms any effort to empower women through formal law will remain ineffective and would have little acceptability and ownership amongst the people. We need to acknowledge the existence of other power structures operating at the same time for which law alone is not sufficient. Advancing only legal solutions can complicate the situation and possibly harm women domestic workers in Pakistan. Therefore there is need for an engagement with other non-legal strategies and local struggles.

4. Breaking the Silence: Voices from the Field

In this section I attempt to further analyse the role of law based upon the findings of a small empirical component of my doctoral research. I have used grounded theory methodology,¹⁹ to explore the lived realities of women domestic workers' lives through listening to their voices and experiences in a plural legal setting. My analysis is based on in-depth group and individual interviews grounded in everyday life of women domestic workers, their perceptions, and experiences of their social and legal universe. This technique of conducting in-depth group interviews in the form of discussions has provided more space to women to express themselves openly and it also created an emotional engagement with their own situations of which they were not very conscious earlier. It also led to an active involvement of my respondents in the construction of data about their lives and enabled them to make their views explicit. The responses from the field opened a window into the hidden lives of those who work in the privacy of others' households. The voices and experiences of the women domestic workers that I interviewed during the course of this study exposed the various aspects of domestic service.

Poverty, illiteracy, lack of resources, and unemployment, leave women with no other choice, but to engage in this occupation. Women enter into this low-skilled and low-paid economic activity because the male breadwinner is either unemployed, sick or has died, and as a result the burden of providing for the family's basic needs falls on their shoulders. As discussed in section 2, in the absence of any fixed wage structure their wages vary from five hundred rupees to five thousand rupees per month depending on the type of work and the number of working hours.²⁰ Those who work as full-time workers starting at 7 o'clock in the morning to 5 o'clock in the evening earn between fifteen hundred rupees to three thousand rupees per-month. Time schedule varies according to the needs of both employer and employee as in some cases they start their work at eight or nine in the morning and finish by six, whereas live-in workers are engaged for the day and night. They either get a day off in a week, or sometimes in a month, or fortnightly depending upon the will of the employer. Those who are live-in-workers (who stay through the day and night) are paid between three thousand to five thousand rupees. Women who work as part-time workers for only two to three hours (doing just one job either cleaning, laundry or dishwashing) are paid between five hundred to thousand rupees per task. Such type of work is called "chota kaam" or part-time work.

Child-carers or nannies are better paid as compared to those engaged in other household chores.²¹ ZB who works as a nanny in Karachi for an affluent family gets 5000 rupees per month as compared to her previous job with a middle-class family where she performed the same duties but was only getting 3000 rupees. Similarly N who works in Peshawar as a nanny for a Chinese couple gets 3500 rupees. N's salary is higher than the salary of other nannies because her employers are foreigners and pay slightly higher wages than the local residents.

There are also many women domestic workers who are single, separated, divorced with small children, or neglected wives of polygamous husbands. It is rare for women in these circumstances to afford the luxury of staying at home, secure in the comfort that some men in their lives of which be it their fathers, brothers, ex-husbands or polygamous husbands will accept complete responsibility for maintaining them. Women have to work and earn some living for the sake of survival of their families. What needs to be emphasised instead, is sharing of responsibility between women and men and society as a whole in the upbringing of children and maintaining a harmonious household. There is nothing in a man's biological make-up that prevents him from being a nurturer and caregiver. The reason why men do not participate in housework and share childcare responsibilities is because they do not want to and are able to enforce their will on women who are conditioned to believe that it is their sole responsibility to preserve the marital relationship and family peace. Besides, the inferior legal and social status of women in Muslim countries is a result of misogynistic distortions of the teachings in the *Qur'an* that supports patriarchy and renders women as weak and in need of male protection.

Women domestic workers often work under exploitative conditions where they are expected to work for extra hours without adequate compensation, given left-overs to eat, face verbal and in some cases even physical abuse. They are often denied proper rest time or a proper place to sleep and are on duty almost 24 hours and 7 days a week. S whose family still lives in Punjab came to Karachi six months ago in search of a job with the help of a relative. She is now working as a 'live-in' migrant worker. Her day starts at 6 o'clock in the morning and she works till 10 to 11 o'clock at night without any rest time in the afternoon or evening. The only time she gets to relax is while having her lunch or tea. On a good day (which comes very occasionally), i.e., when her employer is in a good mood, she is allowed to watch television for half an hour in the evening, but that too is subject to the condition that *Sahib Ji* (her employer's husband) is not at home. She is often sent to the nearby shops to purchase groceries. When she took the job she was not informed that buying groceries was also included in her duties. She does not receive any bonus or extra salary for the additional work that she does. Her extra work also includes cleaning the car every Sunday when the driver is not around. Her employer is exploiting her because she knows that S is new in the city, without family and not familiar with the locality. In some cases women are also asked to come and work on Sundays. However when they ask for an extra overtime payment the employer refuses to pay saying, "*yeh koi sarkari nokri nahi key tum over time maang rahi ho. Mein aik paisa faltoo nahi doon gi aur agar tum kaam nahi karna chati to mein aur nokarani dhhoond loon gi*" (This is not a government job that you are asking for over time. I am not going to pay you a single penny and if you don't want to continue I will find another maid).

Employers have their own views on the issue of wages and working hours. A house wife in her interview said very sarcastically that women domestic workers were already paid well. She thought that there was no need to increase their salaries as most of them did not have any formal training and whatever skills they had were actually improved only when they work in employers' households. Another employer who was a housewife complained that middle income groups or salaried class in Pakistan is not highly paid therefore it was not possible for them to pay good wages to domestic workers.²²

A schoolteacher argued that employing a domestic worker even at a low wage should be seen as a measure to combat poverty and unemployment. If the minimum wage is set too high, some households will not be able to afford a domestic worker, which will lead to more unemployment and even greater poverty. She said many unemployed workers are desperate to get jobs and are willing to work for less than the stipulated minimum wage to earn a little income. She was also of the view that domestic jobs are more beneficial than other informal sector jobs because domestic workers get food, shelter and clothing, which is not the case in most jobs. In advancing this line of argument the teacher ignored the fact that, if a minimum wage or working hours are not set then this sector will never be regulated and an environment conducive to exploitation will be maintained. Another employer was of the view that a minimum wage rule will have a negative impact of reducing job opportunities for women domestic workers because there is always surplus labour available. However it may be argued that the issue of

wages should not be considered in isolation and needs to be examined from various angles. First of all if there is surplus labour available, there is at the same time more demand for domestic workers. With more women entering into gainful employment they need help at home to carry out household chores. Secondly, if employers cannot afford a full-time worker they can hire a woman domestic worker on part-time basis. Similarly a woman domestic worker can earn more or less the same amount of money by working part-time in two or three households. Another possibility is that if a woman in domestic service is working part-time she can make use of her extra time by learning some other skills such as sewing and that skill can be used for earning a living along with domestic service.

The social stratification between the employer and employee on the basis of stark differences in their economic status also contributes to the powerlessness of the domestics. It reflects that Pakistan is a class-based society where people are still defined /judged by their economic status. One domestic worker said, '*izzat usi ki hai jis kay paas paisa hai...gharib ki na koi izzat hai aur na koi zindagi... sari umar jutey khati aur taniey suntey guzar jati hai*' (Respect comes with money...if you don't have money you are not respected. A poor person spends all her life on other peoples' behest and gets the blame for everything.) This stratification between the employer and the employee often leads to discriminatory and demeaning treatment. As a result these women workers sometimes become victims of violence and abuse at the workplace and are exposed to physical and psychological trauma as reported by many domestic workers in their interviews who are often subject to abusive language and beatings by the employers.

The inequality of class status is also visible in the way these workers are addressed. Women domestic workers also reported name calling and derogatory statements. There are specific names/titles by which domestic workers are always addressed such as *maasi, mai, Ayah, babbo, jamadarni*. (These names are like calling a cleaner 'cleaner' or a bin man 'bin man' and not calling them by their own names). Use of such phrases in day to day language reflects class based tendencies of society by which people are still defined and judged by their economic status. These names also obscure the truth that all domestic workers are real workers who ought to have real rights, deserve respect and dignity and are entitled to legal protection. Use of such names by employers denies the social recognition and dignity which women domestic workers deserve. . Women domestic workers were in their interviews mentioned that what really hurt them was that their dignity as human beings was not respected by their employers. Conditions under which these women workers live and work are also a clear violation of the basic Islamic tenets of humanity, respect and dignity of labour as discussed in the previous section and are a reflection of the double standards of a society that claims to be Islamic.

During interviews domestic workers mentioned that the use of such phrases is a constant reminder to them of their low status as if they are inferior human beings. Considering domestics '*as stupid with no signs of intelligence or one who takes ages to learn a simple thing or those without common sense*' are some of the comments made by almost all the employers who either consciously or unconsciously have a superiority complex that whoever is lagging behind them in respect of either education, job, financial situation or even caste is inferior. This complex of being superior also reflects the class-conscious nature of Pakistani society.

Employing domestic workers also involves social prestige and status symbol. The more domestic workers one has, the higher is the social status. Another indication of class differences between the employer and employee appears in the form in which food is given to domestic workers in different households and their living space is separated.²³ Women domestic workers in their interviews openly resented the way they are given food by their employers. They are allowed to eat only after the employers have had their meal. In many households they are given food in discarded crockery and are made to sit on the kitchen floor or eat in the corner of the courtyard. Similarly as discussed earlier giving domestic workers leftovers is a very common trend. Many employers only give a bit of freshly cooked food and the rest is leftover food. Others do not even bother to give fresh food. One woman domestic laughed out and said '*mein to kabhi ghawb mein bhi nahi soch sakti keh begum sahib nei mujhi maiz par khana diya ho*' (I can't even dream of sitting and eating on the same table with my employer.) They also complained that they do not have adequate living accommodation. In many households women are asked to sleep either in storerooms, laundry rooms or are asked to sleep with the children in their bedrooms on the floor.

To assess how far law could be an effective tool for empowering women domestic workers, I asked domestic workers about their experiences of formal and informal mechanisms of law in the country and how they perceive the legal system. I also asked them were their services to be regulated and given legal protection, would they use law as a recourse for their protection?

Women domestic workers considered *panchayats and jirgahs* as biased against women and male-dominated forums.²⁴ I noted that some women had approached the alternative dispute resolution forums but they had lost their faith in its effectiveness as happened in the cases of R, ZN and SH. They quoted a number of incidents where family disputes and property issues were referred to these alternate dispute forums (*jirgahs and panchayats*) but in none of the cases were women able to get justice, whether it was a matter of claiming maintenance from an ex-husband or receiving a share from the property of deceased husband or a case of child custody. ZN in her interview said, '*jab zulm karney walaiy insaf ki kursi par beith jain to insaf nahi milta*' (How can you get justice if the judge himself is the perpetrator?). I also noticed that the only cases referred to these informal forums were family disputes and not disputes between employer and employee. One obvious reason for it could be that those who hold positions in these forums are employers therefore it would be a clear conflict of interest for them to take up cases against themselves. It also tells us that disempowerment of women employees is a more oppressive form of patriarchy.

When women were asked about their views on the possibility of being protected by the formal law, I found that women in Karachi and Peshawar were aware of the fact that workers in other jobs such as factories or public institutions are protected by the law. They also knew of labour unions which support workers against any exploitation by the employers. This could be due to the fact that their male members work as factory workers. When I asked them whether they would like their jobs to be regulated by the formal law, the majority of them responded in the affirmative. However they expressed their deep scepticism about the possibility of using law. This reluctance to use formal law was not because they did not have trust in the formal legal system but due to their own vulnerable position in the society they considered it extremely difficult to have access to formal courts. Without having any idea of how the court system works, and in the absence of legal aid it is extremely difficult for them to approach the formal legal system.

The responses from the field clearly show that the law-making process pays little attention to the real lives of those, for whom the law is meant to provide protection; therefore there is a strong need to take into account the actual lived realities of women's lives.

Due to stark class disparities, existence of patriarchy, gender differences, and poor socio-economic situation and courts being in the public domain, it is difficult for women to use law as a measure for protection, challenging exploitation and claiming their equal rights. Being illiterate, the language of law is also incomprehensible and compliance with the requirements of the law would be far more complicated for them. Another reason for laws being ineffective would be due to the nature of their workplace i.e., domestic service being carried out in the privacy of homes it would be extremely difficult in the private homes to interfere or inspect and keep a check and control. By pointing out these difficulties I am not suggesting that law is not needed at all. Black letter law can serve as a standard setting norm and law's presence by providing legislative protection to domestic workers would be necessary to give recognition to women as 'workers' and for improving their working conditions in terms of working hours, wages, paid leave etc.. Although law has made a little impact on bringing social change, yet it provides legitimisation and makes women more visible in the public domain. However it is necessary to recognise the boundaries/limitations of law and provide appropriate social and policy responses because law reform itself will be insufficient in bringing change in the lives of women domestic workers in Pakistan.

Another interesting issue that emerged from the data collected is that women domestic workers have, despite their vulnerability, devised their own strategies to resist and to protect themselves against abusive treatment by employers. From their experience they have learnt to carefully select an employer; for instance they do try to get jobs in nuclear families to avoid workload in large family households. Similarly they prefer working with professional women employers because they are not at home during most part of the day and the domestic worker gets some liberty to perform her tasks without constant surveillance. However they cannot be very selective at all times and have to accept a job as that is the only source of income for them.

In daily life, the household is also a political arena where '*personal becomes political*'. An example of this could be when the domestic worker by adopting a variety of strategies challenges the power structure i.e. the superior and dominant status of the employer. In group discussions some domestic workers openly advised their co-workers by sharing their way of tackling the unreasonable attitude of their employers. One of them suggested that the best way to avoid workload is to mess up your duties or stop performing one of the tasks assigned with the same diligence and care. The internal strategy she adopted was that she started washing clothes carelessly and continuously complained about the heavy workload. As a result, her employer hired another woman for doing the laundry without reducing her salary because otherwise the employer was satisfied with the way she performing her child care duties. Women domestic workers from Karachi in their interviews also mentioned that their refusal to work for extremely low wages and demand increased wages when there is another job available to them. Women domestic workers' refusal to accept rotten and leftover food or worn out clothes also indicates their resistance to degrading treatment. These efforts to resist and subvert the control and exploitative treatment of the employers reveal that women domestic workers do challenge the stereo type attitudes of employers in their own way. The data from the field also removes the misconception that women domestic workers are inarticulate, ignorant and passive victims of abuse. Instead they are productive, hardworking sensible adults who have the ability and strength to cope with tough situations at a very young age. I therefore argue that despite the presence of so many negative factors, to consider these women workers as passive victims of violence and abuse is erroneous as they have the capability to resist and to struggle. Although such struggle might not be very sustainable and the process of change could be very slow and arduous yet it has created some space and tolerance for the work done by women.

5. Conclusion

The present paper has explored the limits of law as an effective process and mechanism for empowerment of women domestic workers. The data from the field has been useful in understanding law in its social context by listening to women domestic workers' experiences of both formal and informal law. It clearly suggests that women consider formal state law as a better mode of gaining access to justice as compared to informal customary mechanisms such as *jirgahs* and *panchayat*. However due to lack of support structures and their precarious socio-economic status they are not in a position to use the legal system. For an effective implementation of laws it is pertinent to look for some other means of support so that access to justice can be made possible for women.

There is considerable optimism that organised "voice" and legal policy responses, will be able to change the terms on which women domestic workers are employed and improve their living and work conditions. However any change in the present structure would be possible only by recognising and validating the "worker role" and by organising women domestic workers and enhancing their collective strength. They have accepted the challenge to come out of their homes and make use of whatever skills they have for earning a living for the sake of their families. It has given them the courage to face the world and struggle for survival in an environment in which class disparities are apparent and a constant source of discrimination and humiliation. The data from the field also demonstrates the presence and use of these strategies, even among the Pakistani women domestic workers, who, if given further support, are capable of bringing some positive changes in their lives. Therefore as a way forward I suggest that myriad forms of strategies could be adopted including network(s)-ing and providing organisational support, the possibility to organise domestic service as a service industry, awareness raising campaigns, the role of state vis-à-vis local government set-up and finally recognition and protection under a legal framework so that law can be used as an effective measure for empowering women domestic workers.

Networking has the potential for advancing the interests of women domestic workers, as bringing any revolutionary change in their lives is not possible, yet with combined effort and support a gradual but steady change in their day- to- day lives is possible. In their interviews women workers mentioned their need for support to organise themselves such as grassroots and community-based organisations. These organisations could take the initiative and streamline efforts of women domestic workers in the right direction.

There are women organisations and unions in other employment sectors such as PILER, Working Women Forum" and "Fisher Folk Forum" therefore setting up organisations for women in domestic service would not be something exceptional. Working together as a pressure group with these

organisations could therefore be a more effective strategy for women in domestic service. Women domestic workers organisations in Pakistan could also benefit from the experiences and various strategies adopted by organisations working at the international level for instance organisations like "INTERCEDE" in Canada, "KALAYAAN in the UK, "Break the Chain Campaign for Domestic Workers Rights" in the and National Women Domestic Workers Movement in India (NDWM) which has played an important role in organising domestic workers in fifteen major parts of India.

The idea of organising through "women collectives" though an idealistic solution still carries weight. Makeshift cooking and child-care arrangements would give women an opportunity to use their spare time in developing their skills or they could spend in earning some more income. There are already some communal systems in vogue among these communities such as pooling their money in the form of monthly 'committees' or to help women to find jobs through relatives, community members and neighbours. Therefore suggestions such as a collective kitchen, childcare and laundries would not be an alien concept to their culture. This would also help women in taking decisions and enhance their organisational skills.

Another strategy for empowerment could be to recognize domestic work as a separate sector in service industry. For this it is important to recognise domestic work as a form of productive labour. Women domestic workers are producers contributing towards society through their services. To gain recognition as a service industry, the domestic worker should be included in the definition of a 'worker' in all legislation pertaining to employment. This would secure a stronger position for them and ensure protection through various legislative provisions, social security, maternity benefits, working hours, etc.

Raising awareness among women in domestic service could be another non-legal strategy which could help in implementation of any legislative provisions. This could be achieved through training programmes, holding community meetings and discussion groups/ support groups. An awareness of their own rights can lead to collective action because otherwise a domestic worker works within the closed environment of a private home where interaction with other co-workers is limited. This process should not be limited to domestic workers as it is equally pertinent to make employers aware of the rights of domestic workers. A change in the thinking and attitude of employers is essential for improving the status of domestic workers. Print and electronic media can also play an important role in bringing to light the issue of domestic workers. It is also important to initiate a consultative process involving activists, government officials, legislators, non-governmental organisations, labour trade unions, researchers, domestic workers and employers. This consultative process would be beneficial as most of them are already in the process of negotiating with the government on the new labour policy and are also involved in the process of codification of labour laws in the country.²⁵

The state also has a role in providing primary education, health care, housing, water and sanitation. It cannot be absolved from its responsibilities of providing these basic facilities to its citizens. Women domestic workers from all the four squatter settlements interviewed complained about the lack of basic civic amenities, healthcare and education systems. By providing the basic infrastructure the general living conditions of these workers could be improved and some of their main problems could be resolved.

A unique institutionalized approach for welfare system has been laid down in Islam through *Zakat*, *Ushr* and *Sadaqat*.²⁶ Pakistan is among one of the few Muslim states to operate an official *Zakat* system.²⁷ *Zakat* is collected through banks and the Government of Pakistan has established a Central *Zakat* Council to oversee the collection and disbursement of *Zakat* at federal, provincial, district and local levels. The *Zakat* funds thus collected from the public could easily be utilised for the welfare of domestic workers. Labour welfare facilities such as unemployment allowance, financial assistance to disabled or disadvantaged workers, educational and health provisions for workers and their children can be financed from the *Zakat* funds. Proper use of these resources can help in improving the situation of domestic workers in Pakistan.

Last but not the least, the final recommendation is to give recognition to domestic work as real work like any other form of employment and to treat domestic workers as real workers under the labor code. The blurring of the line between 'worker' and 'part of the family' leaves much room for abuse and exploitation of women domestic workers. It is therefore proposed to include domestic workers in the definition of a 'worker' in all employment related laws and to frame a separate piece of legislation that

would regulate working hours, minimum wages for domestics, maternity, annual and sick leave and other job related benefits.

Endnotes:

¹ Pakistan is a developing Muslim country, which came into existence on 14th August, 1947 when the British colonial rule formally ended in the Indian Subcontinent. The estimated population of the country is 152.3 million, whereas the total labour force consists of 45.23million persons out of which, male participation activity rate is 40.74 percent and female participation rate is 11.16 percent. (Source: Government of Pakistan, *Economic Survey 2004 -2005*. Ministry of Finance, Islamabad). The total number of households in Pakistan according to size and urban rural – residence is 20374970, out of which urban households are 7370202 and rural households are 13004768. (Source: Pakistan Demographic Survey 2003. Available at <<http://www.statpak.gov.pk/depts/fbs/statistics/pds2003/table-03.pdf>> accessed on 5th July 2006).

² Factories (Amendment) Act 1973 (No. 16) *Gazette of Pakistan, 1973-02-07, XX*, West Pakistan Shops and Establishments Ordinance 1969 (No. 8) *Gazette of West Pakistan, 1969-07-03, Extraordinary*, West Pakistan Industrial and Commercial Employment (Standing Orders) (Amendment) Act 1974 (No. 48). Pakistan Industrial Relations Ordinance, 2002. *The Maternity Benefit Ordinance, 1958*.

³ Legal centralists such as Jeremy Bentham and John Austin believe that the state is the sole creator of laws. In their view laws are commands from the government that create a duty in the governed and are backed by a threat of sanction from the government. In this way they defined law primarily in terms of the power to control others. Legal centralism has a long history and a broad influence. Its roots lie in the conventionalist political philosophies of Hobbes and Hume, lateron elaborated by Jeremy Bentham (1748-1832) and then adopted, modified, and popularized by John Austin. According to their view law is the command of a sovereign backed by force. By the mid-twentieth century, however, this account had lost its influence among working legal philosophers. Its emphasis on legislative institutions was replaced by a focus on law-applying institutions such as courts, and its insistence of the role of coercive force gave way to theories emphasizing the systematic and normative character of law. The most important architects of this revised positivism are the Austrian jurist Hans Kelsen (1881-1973), HLA. Hart (1907-92) and Joseph Raz among whom there are clear lines of influence, but also important contrasts. Legal positivism's importance, however, is not confined to the philosophy of law. It can be seen throughout social theory, particularly in the works of Marx, Weber, and Durkheim, and also among many lawyers, including the American "legal realists" and most contemporary feminist scholars. Although they disagree on many other points, these writers all acknowledge that law is essentially a matter of social fact. Austin, J(1832), *The Province of Jurisprudence Determined*.(Cambridge: Cambridge University Press); Campbell, T (1996), *The Legal Theory of Ethical Positivism*(Dartmouth: Aldershot), Dworkin, R (1986), *Law's Empire*(Cambridge MA: Harvard University Press), Hart, HLA. (1994). (2nd ed) ,*The Concept of Law* (Oxford: Clarendon Press), Kelsen, H (1945), *General Theory of Law and State* trans. A. Wedberg, repr. 1961. (New York: Russell and Russell), Raz, J (1979), *The Authority of Law* (Oxford: Clarendon Press).

⁴ It is an exploratory study carried out in an urban setting that does not claim to be representative of all the segments of domestic workers in the country. Due to time and monetary constraints I could not broaden the universe of this study and had to confine it only to the two cities Karachi and Peshawar, Pakistan. In each city two squatter settlements were chosen from where domestic workers come and work in middle and upper class residential areas. The respondents were randomly chosen from these squatter settlements however variations of age, marital status, ethnic and religious backgrounds and nature of job i.e. part time or full time/live-in worker were kept in mind. At each site twenty to twenty five women were interviewed as a group. From amongst them, I chose four to five women for individual interviews at each site. Most of the interviews were conducted in the evenings or on weekends when women domestic workers were at home. Group discussions revolved around broader themes such as employer/employee relations, conditions of work (which included their nature of work, working hours, nature of contract, leave issues, health care). Harassment at workplace; what are the various patterns and practices, which render female household workers vulnerable to abuse? Self Perception; how a woman worker is perceived by the society, her self perception as worker and as a woman. Has paid work improved her position in the social context or does her class and low status of work in the society affect her self-esteem? Has there been any significant change in the power relations and in relaxation of patriarchal controls since she has started to earn a living? (Has her work given her self confidence and does she participates in decision making at the household level? How does the workplace culture contribute to the construction and maintenance of gender roles and the

gendered hierarchy that privileges males over females, what in their view could be the possibilities for improving their working conditions and their status in the family at workplace and society at large? And finally what are the possibilities of organizing and making access to justice possible for them. In addition to domestic workers I also conducted interviews with employers, housewives, professional women, women and labour activists and officials from the Ministry of Labour.

⁵ Feminist researchers also emphasise on women's lived experiences. They are of the view that experience can be a source of knowledge because the experiences of men and women are different from each other. Class, gender, race and ethnicity all affect men and women differently. They also look into the theoretical as well as policy and action framework in the interest of realising social justice for women. For a detailed study of feminist research practice see (Maynard, M, and Purvis, J, 1994), (Fanow, M, and Cook, J, A, in Nielsen, J, M, 1990), and (Reinharz, S, 1992).

⁶ See endnote 2

⁷ "The News" dated November 10th, 2006. p 4, and "The Dawn" dated Nov. 8th 2006. p16.

⁸ 2004. "Rapid Assessment Studies of Bonded Labour in Pakistan." A study conducted by the Bonded Labour Research Forum in collaboration with the Ministry of Labour, Manpower and Overseas Pakistanis Government of Pakistan and International Labour organization.

⁹ These include "All Karachi Labour and Hosiery Garments Labour Association", "Working Women Forum" and "Fisher Folk Forum".

¹⁰ Fraser's theory of injustice has been used skilfully by (Chigateri 2004) in her doctoral study of Dalit domestic workers in India. Also see Chigateri, S. (2007) 'Articulations of Injustice and the Recognition – Redistribution Debate: Locating Caste, Class and Gender in Paid Domestic Work in India' *Law, Social Justice & Global Development* http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2007_1/chigateri

¹¹ Nussbaum classifies capabilities into three types. Basic capabilities are the innate equipment of individuals that is the necessary basis for developing more advanced capabilities. Internal capabilities build on pre-existing basic capabilities by processes such as exercise, education, and training whereas combined capabilities are defined as internal capabilities plus the external conditions that make the exercise of a function a live option.

¹² Other similar cases are *Shirin Dokht v. Government of Pakistan* 1995 PLC (C.S)251, *Pakistan International Airlines Corporation through Chairman and others v. Samina Masood and others* PLD 2005 SC 831.

¹³ Factories (Amendment) Act 1973 (No. 16) *Gazette of Pakistan, 1973-02-07, XX*, West Pakistan Shops and Establishments Ordinance 1969 (No. 8) *Gazette of West Pakistan, 1969-07-03, Extraordinary*, West Pakistan Industrial and Commercial Employment (Standing Orders) (Amendment) Act 1974 (No. 48), Pakistan Industrial Relations Ordinance, 2002.

¹⁴ For instance imposing certain age limit conditions might result in the exclusion of women from jobs. Similarly marital status should also be covered with sex because married women with young children are often discriminated by the employers who feel that child rearing responsibility often leads to women's absence from job.

¹⁵ The Qur'an and Hadith are the primary sources of Islamic law. The Qur'an was revealed to Prophet Mohammad over a span of almost twenty three years. What distinguishes Qur'an from other holy books is that it is preserved in its original form and not a single change has been made to it over the centuries. It consists of 30 chapters, 114 suras and 6666 verses. 500 verses deal with legal matters. The Hadith constitutes the words and deeds of the Prophet Mohammed. There are two elements of Hadith) the *matn* (text) and *Isnad* (chain of narrators). Ijma (consensus of opinion) and Qiyas (analogical deduction) and Ijtehad (independent juristic reasoning) are the secondary sources of Islamic law. In this paper I have used the two primary sources of Islamic Law to support my argument.

¹⁶ Mauss (1906) identified at least two legal systems among the Eskimos. Llewellyn and Heobel, (1941) are of the view that there are multiplicity of legal systems within a geographically limited society, even in the most homogenous societies there may be several legal systems operating at the same time. Bohannon (1967; 1967) sees state law as secondary and derivative. He developed the idea of 'differing realms of law' to illuminate the relationship between customs and law. In addition to the above scholars Gurvitch (1947), Malinowski (1959), Nader (1965) also followed the classical legal pluralist approach. As cited by Yilmaz, I. (2005) *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. (Great Britain: ASHGATE).

¹⁷ The most discriminatory piece of legislation in the legislative history of Pakistan was the *Hudood Ordinances* promulgated in 1979 by the then Chief Martial Law Administrator General Zia-ul-Haq. The Ordinances covers theft, drunkenness, adultery, rape and bearing false witness. The punishment under the Ordinances is divided into *Hadd* and *Tazir*. In case of *Zina*, *Hadd* is stoning to death for married persons and 100 lashes for unmarried person if four male witnesses are produced. With any

other type of evidence including that of a woman or a non-Muslim *Hadd* cannot be inflicted and the crime is punishable by *Tazir i.e.* imprisonment up to 10 years and whipping of 30 stripes. These laws turned out to be extremely oppressive and discriminatory against women. The Law of evidence 1872 was changed into *Qanoon i Shahadat* 1984 and the evidence of two female witnesses was equated to one male witness which, means that the status of women was reduced to half. This law, clearly violates women's constitutional rights as equal citizens before the law by reducing the value of her evidence to half that of man in all matters relating to future and financial transactions and discounting it altogether if there is no male witness. Under the *Zina* Ordinance no distinction was made between fornication, adultery and rape. The testimony of the raped woman was altogether rejected and only the evidence of four male witnesses was required to prove the claim. The conditions laid down for evidence were such that the rapist could easily escape prosecution and go unpunished. Under such conditions it has become extremely difficult for women to prove rape and if they cannot prove it, they themselves stand accused for fornication or adultery.

¹⁸ Federal Bureau of Statistics, Government of Pakistan has taken a few initiatives, such as the 1997 Labour Force Survey which now includes 14 types of household labour as part of economic activity. This has raised labour force participation rate to 25.5 percent, yet this estimate still understates the actual position.

¹⁹ The conceptual roots of grounded theory lie in the pioneering works of Glaser and Strauss who defended qualitative research in contrast to the quantitative method which, was formerly considered as the only systematic form of social research. Grounded theory approach is also used by Scandinavian and African scholars such as Tove Stang Dahl, Anne Hellum, Julie Stewart, Beatrice O'Donaghyua.

²⁰ The equivalent of 1000 rupees is less than £10 which means that the average income of a domestic worker in Pakistan is not more than £10 to £15/- per month and for the part-time workers who receive 500 rupees it comes to less than £5/-. With such low income it is extremely difficult to even feed the families when the price of a 5kg flour bag is between 80 to 100 rupees.

²¹ The reason for this wage difference is either these women have previous experience of childcare or because they are employed as live-in workers. However those who hire young girls as child-carers do not pay them the same salary as they would pay to a nanny. Although young girls do the same amount of work and even sometimes more work, as for instance the *begum sahib/malakan /bibi* (women employer or lady of the house) would ask her to sweep the room or do some dusting when the baby is asleep.

²² For example a school teacher earns between rupees 5,000/- to 10,000/- depending whether employed in the public or private sector.

²³ This treatment of domestic workers also resonates with Victorian England where servants and masters ate separately. Similarly separate living quarters for domestic workers in Pakistan remind of the Victorian times where the layout and structure of the houses made two separate lifestyles possible.

²⁴ *Jirgahs* and *Panchayats* are Council of Elders that act as an informal dispute resolution forum where local communities take up their disputes.

²⁵ Government of Pakistan. "Labour Protection Policy 2005 (First Draft)" Ministry of Labour, Manpower and Overseas Pakistanis. Available at http://www.pakistan.gov.pk/divisions/labour-division/media/LP_PolicyDraft020205.pdf accessed on 20th March, 2006. The six main categories for codification of labour laws are Industrial Relations, Employment Conditions, Wages, Human Resource Development, Occupational Safety and Health and Labour Welfare and Social Protection.

²⁶ *Zakat* means obligatory charitable wealth tax, *Ushr* is tax on agricultural produce, *Sadaqat* is non-obligatory charity.

²⁷ The government of Pakistan's *Zakat* and *Ushr* Ordinance (1980) mandates that 2.5 percent of the value of all declared, fixed assets for those possessing *Nisaab(assets)* are to be automatically deducted at source by the state as *Zakat* at the beginning of the Islamic holy month of Ramadan.

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