

Domestic Workers In India: Law And Legal Provisions

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ABSTRACT:

Domestic workers are an indispensable part of the everyday lives of a large segment of India's urban population. However, in the absence of a national policy to recognise the specific nature of domestic work, their categorisation as 'workers' is merely theoretical. This issue brief highlights the isolated nature of domestic work in India, with particular reference to legislative and social issues, which keep them at bay from availing their rights as 'recognised workers'. There has been a significant increase in the number of women domestic workers in India in recent times. The domestic service is now accepted as an important category of livelihood. The domestic labour debate was particularly prominent in the western academia amongst feminists in the 1960s and 1970s. The steep decline in agrarian produce and livelihood security in rural areas has caused migration of rural people to urban areas. The number of women domestic workers is constantly growing in the informal sector of urban India. Domestic work has remained unorganized, unrecognized and unrewarding for the domestic workers. The domestic workers are denied of minimum wages, healthy work period, safe working conditions and other benefits in the absence of trade unions and state intervention. The women domestic workers do not have support networks and civil society support under the existing circumstances. They experience exploitative situations and multi-faceted abuses. The national and international legal instruments are largely ineffective under the existing circumstances

Keywords: *Domestic worker, social security, minimum wage, sexual harassment,*

Introduction:

Domestic workers are the largest unorganized working class in India. Majority of them belongs to Schedule Caste, Schedule Tribe or Other Backward Community. Most of them fall under the category of women and children. In India, exploitation of domestic workers is rampant. Such incidents involving women and children are regularly reported. With no rights, most of them have become contemporary slaves. Many of them are trafficked and exploited by the placement agencies, which operate without any form of State regulations. In the last few decades there has been a tremendous growth in the demand for domestic workers. To meet this demand there has been a spurt of thousands of placement agencies providing domestic workers. The feeble master-servant relationship leads to low wages, sexual abuse, cruelty and ill-treatment of domestic workers. Employment of children as domestic workers is another serious issue. Individuals belonging to the lower strata of the society are forced to domestic work on account of their financial backwardness. The governing authority has always turned blind eye towards the welfare of this unorganized sector. The stray incidents of judicial intervention are the only ray of hope. A comprehensive legislation is the need of the hour.

Their nature of work varies from cooking, cleaning, washing, gardening, purchase of vegetables and consumer items. In many cases they are compelled to do agriculture and allied works also.² The absence of any specific study makes the ascertainment of the total number of domestic workers, difficult. However, a 1980 study conducted by the Catholic Bishops Conference of India (CBCI) found that in Kerala and Tamil Nadu 90 per cent of them were females; and in Delhi it was 45 per cent.

Problems faced by the domestic workers are innumerable: less wages, unlimited working hours, inadequate working atmosphere, low quality food, sexual exploitation, lack of medical care and social security are few in the umpteen issues. The domestic workers employed in the Gulf countries are the most vulnerable group. With no rights, most of them have become contemporary slaves. Employment of children as domestic workers is another serious issue.³ many of them are trafficked and exploited by the placement agencies, which operate without any form of State regulations. In the last few decades there has been a tremendous growth in the demand for domestic workers. To meet this demand there has been a spurt of thousands of placement agencies providing domestic workers. However, a specific statute to regulate this unorganized sector is absent in India. The present article analyzes the international and national legal frame work governing domestic workers.

Migration within India:

Migration from rural areas to big cities typically occurs due to debt bondage, poverty, sudden death in the family, rural and male unemployment. The glamour of city life acts as a further “pull” factor inducing young girls and women to migrate. Working in cities is seen as a solution to poverty and villagers are unaware of the exploitative working conditions and poor remuneration that the vast majority of domestic workers have to endure. Additionally, a large number of domestic workers come from areas, which have been subjected to natural disasters and man-made crisis situations (such as insurgency) and as such are from displaced communities.

Increasingly, “trafficking agencies” have become a very significant factor in encouraging internal migration. In the arena of domestic work, organised trafficking is taking place as villagers living in the cities are returning to their native places to bring more women, girls and children into this labour sector. Once the girls arrive in the cities, their wages are typically locked or they go unpaid in order to pay the traffickers a fee for securing employment.

Migration Outside of India:

There is an increased demand from richer industrialized countries for cheap, menial and domestic labour. Migrants from poorer, less developed countries such as India can jump to this opportunity as it does not require any high skills or education. Thousands of Indian women travel to countries in the Middle East, South East Asia, and sometimes Europe and North America in search of jobs paying higher wages. However, these women earn the lowest salary for a foreign worker, despite the fact that they may be earning more than they would in India for the same job. Many women travel abroad to send money back home in an effort to improve their quality of life in India. However, in travelling abroad, they become vulnerable to corrupt recruitment practices, lack of work contracts, withheld salaries, physical, sexual, and emotional abuse at the workplace and in many cases, their travel documents are withheld and they are prevented from returning home. In India, the procedure for migrating abroad for work is unregulated. The Indian government has only lately implemented a pre-migration program aimed at educating migrants of their rights. In order to travel abroad, migrants are forced to borrow large sums of money, often with exorbitant interest rates, to pay fees to brokers. In many cases, the migrants, who are often illiterate and naïve to the potential risks of entrusting large sums of money with strangers, are the victims of scams of the fly-by-night brokers. These con artists do not secure the promised job abroad, give them false tickets, or do not secure the appropriate paperwork so that the women can legally work as domestic workers. Thus, many women find themselves in a foreign country without the necessary papers. They are especially vulnerable to not being paid the promised salary and being held in conditions of slavery without the ability to complain to the police. In many cases, the employer holds on to the domestic worker’s passport, preventing her from leaving or contacting the Indian embassy to file complaints.

‘Domestic worker in India

The International Labour Organisation (ILO) Convention on ‘Decent Work for Domestic Workers, 2011 defines the term “domestic worker” so as to include “any person engaged in domestic work within an employment relationship.”The Convention has given wider amplitude and has more application. The definition covers all domestic work inside and outside the house and done in an employer – employee relationship. Hence, an office boy purchasing vegetables for his master can be considered as a domestic worker. The Convention also defined the word ‘domestic work’ as that “performed in or for a household or

households. However, persons who perform domestic work occasionally or sporadically were excluded from the definition.

The term 'domestic worker' is not susceptible to any precise definition. In India, the absence of a central statute governing them makes the attempts to define the term, difficult. Anyhow, the Domestic Workers (Welfare and Regulation of Employment) Bill, 2015 introduced in the Lokh Sabha, defines "domestic worker" as "a person employed in a household for domestic work." The meaning given in the Bill is inadequate. The term "domestic work" is also defined vaguely as "all household chores, child care, personal care or any other job connected with household work." ⁵Though the Bill was introduced in 2015, so far it has not received the approval of the Parliament.

In 2017, the Ministry of Labour & Employment has taken steps for simplification, amalgamation and rationalization of Central Labour Laws and replacing them with four Labour Codes viz. Code on Wages, Code on Industrial Relations, Code on Social Security & Welfare, and Code on Occupational Safety, Health & Working Conditions. The Draft Labour Code on Social Security & Welfare defined the term "domestic worker" as "a person who is employed for remuneration whether in cash or kind, in any house hold or similar establishments through any agency or directly, either on a temporary or contract basis or permanent, part time or full time to do the household or allied work and includes a replacement worker who is working for the main workers for a short and specific period of time as agreed with the main worker." Explanation- household and allied work includes but is not limited to activities such as cooking or a part of it, washing clothes or utensils, cleaning or dusting of the house, driving, gardening, caring/nursing of the children/sick/old/mentally challenged or disabled persons. This is an exhaustive definition of domestic worker.

Unorganized Workers' Social Security Act, 2008:

The Act defines "unorganised sector" as an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten. And "unorganised worker" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule II to this Act. The Act contains provision for National Social Security Board and State Social Security Board for the effective implementation of the provisions of the Act.

There are many unorganised sectors of working class in the length and breadth of India. Workers associated with agriculture, farming, weaving, fishing, house hold works, painting, art, mason, carpenter, black smith, gold smith are the major unorganised working class in India. There is a special statute for protecting the rights of the above class. This Act provides for the social security and welfare of unorganised workers. The Act defines "home-based worker" as a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.³² Similarly "self-employed worker" means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government.

In a recent decision in 2018- *Shramjeevi Mahila Samiti v. State of NCT of Delhi*- the Supreme Court directed the Centre not to disburse any grants to the States which have not registered domestic workers under the Unorganised Workers Social Security Act. The directions to the Centre came on a petition filed by an NGO which had told the court that despite the Act coming into force in 2008 and framing of several schemes, no domestic worker has enjoyed their benefits.

Discrimination against Women 1979:

The Convention empowers the member States to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

Domestic Workers Convention, 2011

an overwhelming majority of 185 member States of the ILO voted in favour of adopting the Domestic Workers Convention No. 189. The Convention provides: (a) freedom of association and the effective recognition of the right to collective bargaining, (b) the elimination of all forms of forced or compulsory labour, (c) the effective abolition of child labour and (d) the elimination of discrimination in respect of employment and occupation.¹⁰ Member State shall take measures to ensure that domestic workers:- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household, (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave and (c) are entitled to keep in their possession their travel and identity documents. This is the only document recognized by the member States for the protection of rights of the domestic workers. The provisions of the Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 etc have general application.

Protection under Indian Constitution:

Article 21 of the Constitution is the sum and substance of human rights of a person. In *Bandhua Mukti Morcha v. Union of India* P.N Bhagwati, J. observed that “It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin case* to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State, neither the Central Government nor any State Government, has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

Constitution is the *grund norm* in every State. It protects the rights of the vulnerable sections of the society. In a report submitted by the Ministry of Women and Child Development, 40% of India's children have been declared to be vulnerable or experiencing difficult circumstances. They are entitled to special protection under Articles 14, 15, 17, 21, 23 and 24 of the Constitution. Every person is entitled to equality before the law and equal protection of the laws;¹⁴ and no person can be deprived of his life or personal liberty except according to procedure established by law.

The Directive Principles of State Policy under Part IV of the Constitution also impose State responsibility to secure:- (a) equal right to an adequate means of livelihood, (b) ownership and control of the material resources of the community are so distributed as best to sub serve the common good,(c) the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, (d) equal pay for equal work for both men and women, (e) health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and (f) children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The Minimum Wages Act, 1948:

One of the central pillars for ensuring conditions of decent work for domestic workers in India has been the wage rates notified for domestic work. Despite the patchy coverage of domestic workers under various labour laws, in recent years, some State governments have notified minimum wages for domestic workers. The Supreme Court further held that while fixing the minimum wages, expenses for children, education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage should constitute 25 per cent of the total minimum wage. The wage structure, which approximately answers the above components, is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances.

The purpose of the Act is to provide minimum rates of wages in certain employments. In *Bijay Cotton Mills Ltd. v. State of Ajmeer*, the apex court held that ‘it can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of the Constitution. The workmen must get minimum wages and if the management cannot afford to do so, it has no right to exist.

Even if there is no statutory direction for the payment of fixed wages to the domestic workers, some State governments issued executive orders for payment of minimum wage to the domestic workers. These orders are neither based on any study nor considering index of living conditions of the workers. The Labour and Skill (E) Department, Government of Kerala has directed to pay Rupees 5070 as monthly minimum wage for the domestic works.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

Domestic servants are often excluded from labour laws which mean they are not entitled to the same rights as other workers.²³ Sexual harassment against domestic workers is a nightmare prevalent in the domestic worker scenario. House owner, his wife, children, friends, relatives, and neighbours are always a threat to the domestic workers. In *Vishaka v. State of Rajasthan*²⁴ the Supreme Court issued certain guidelines for the protection of women employees at work place. The Sexual Harassment Act, 2013 protects women against ‘sexual harassment’ at ‘workplace.’ It declares that, ‘no woman shall be subjected to sexual harassment at any workplace.’²⁵ The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: (i) implied or explicit promise of preferential treatment in her employment; or (ii) implied or explicit threat of detrimental treatment in her employment; or (iii) implied or explicit threat about her present or future employment status; or (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or (v) humiliating treatment likely to affect her health or safety.

The term “workplace” includes *inter alia*, “a dwelling place or a house; and “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

Any aggrieved woman can make a complaint against the respondent. “Aggrieved woman” means: (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; and (ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

Employees’ State Insurance Act, 1948:

In many situations illiterate domestic workers are forced to work in a pathetic situation in connection with the health, safety and security of the worker. Presently, except under vague tortious law principles, no special statutory obligations have been imposed upon any person to protect the health and safety of the domestic workers. Even though the Employees State Insurance (ESI) Act, 1948 was enacted mainly against employees in the industry and other business organisations, it is advisable to apply it to domestic workers also. The object of the Act is to provide for certain benefits to employees in case of sickness, maternity and ‘employment injury’ and to make provision for certain other matters in relation thereto.

In *P. Asokan v. Western India Plywoods Ltd* Sukumaran, J. beautifully explained the importance of E.S.I Act as “Law had no difficulty in projecting an equity aspect, in imposing a burden on the master and relieving the hardship of the servant, who was at any rate in those days, an underdog, with unlimited disabilities and difficulties. Even when the servant was guilty of a tort, the master also was saddled with the responsibility to meet the claim of the victims of the servant's negligence. The theory of vicarious liability was evolved and developed over the years.”

The Child Labour (Prohibitions & Regulation) Act, 1986:

More than one-third of the country's population, around 440 million is below 18 years. Resources must be invested in children proportionate to their huge population.⁴⁰ However, they are widely used for bonded labour, domestic work, restaurants, agricultural labour, construction activity, carpet industry, garment industry, fish/shrimp export and other work in the formal and informal economy. The Child Labour (Prohibitions & Regulation) Act was enacted to ban employment of children below 14 years and to regulate the conditions of work of children in employments where they are not prohibited and also to lay down enhanced penalties for employment of children. The Act provides total ban for works described in part A and B of the Schedule. The Act contains provision for hours and period of work and weekly holidays.

Conclusion

The women domestic workers are subjected to series of injustices, deprivations and indignities in modern society due to the absence of meaningful legal safeguards, welfare measures and other provisions for the empowerment of women. They are also socially weak, economically vulnerable and politically disadvantaged section of Indian society. They deserve proper care, protection and measures for empowerment in modern society on the basis of humanitarian considerations. The women domestic workers do not have support networks and civil society support under the existing circumstances. They experience exploitative situations and multi-faceted abuses. The national and international legal instruments are largely ineffective under the existing circumstances.

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30. *Ibid.*, Section 2 (a)
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36. *Ibid.*, Section 5
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