



“HUMAN RIGHT VIOLATION AND DOMESTIC WORKERS IN INDIA: NEED OF HOUR TO A SEPARATE LEGISLATION”

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Abstract:

Domestic work is one of the most important avenues for semi literate and literate people. In-fact, it is the primary source of income and employment for man and women working in un-organized sectors. Increase in per- capita income due to India s economic growth leads to more families falling under middle / high income households. In last few decades there has been a tremendous growth in the demand for domestic workers which has led to the trafficking and other forms of exploitation of millions of men, women and children of the both sexes and to meet this growing demand there has been a spurt of thousands of placement agencies providing domestic workers in metro-towns of many states, who are exploited in various ways as well as trafficked and remain outside the purview of any legislative control .The issue of exploitation of men, women and children domestic workers is frequent and regularly reported. With no rights and rules to fall back on, most of the domestic helps have become contemporary slaves. It is also a known fact that many women and children are trafficked and exploited by the placement agencies, which operate openly without any form of restrictions and regulations.

Absence of any legal protection and any special law which led to severe exploitation men, women and children .which include depriving domestic workers from their entire salary average more than 16-18 hours of work per day, absence of proper food and living/sleeping condition, forced and total cut off from their family members, bounded labour , sexual exploitation by agent during transit, at the office of agency and at the work place In houses of employers, The list of exploitation is endless and frequently reported upon by the media .This article aims to examine the status of domestic workers in the country and the legal framework for decent work for domestic worker in India.

Keywords:- domestic workers, exploitation, trafficking, un-organized sectors, decent work , Social security, Economic status, Rights, Migration, Basic Pay etc.

INTRODUCTION:

Domestic work is one of the most important avenues for semi literate and literate people. In-fact, it is the primary source of income and employment for man and women working in un-organized sectors. India is witnessing a constant increase in the number of domestic worker and they have lack of bargaining powers which makes them one of the most exploited sections of the society. They are more vulnerable³ to the ill treatment at the hands of the employer. Increase in per- capita income due to India s economic growth leads to more families falling under middle / high income households. In last few decades there has been a tremendous growth in the demand for domestic workers which has led to the trafficking and other forms of exploitation of millions of men, women and children of the both sexes and to meet this growing demand there has been a spurt of thousands of placement agencies providing domestic workers in metro-towns of many states, who are exploited in various ways as well as trafficked and remain outside the purview of any legislative control.

HUMAN RIGHT VIOLATION AND DOMESTIC WORKERS:

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ISSUES AND CHALLENGES:-

According to the survey done by WIEGO the domestic workers come from vulnerable communities and backward areas. The majority are poor, illiterate, unskilled and do not understand the urban labour market. Their work is undervalued, underpaid and poorly regulated. Lack of decent wages, work conditions and defined work time, violence, abuse, sexual harassment at workplace, victimization at the hands of traffickers/placement agencies, forced migration, lack of welfare measures and lack of skill development avenues resulting in stagnation are major issues that they face.

³ Domestic Workers in India: Status, Issues, Legal and Policy Framework - General Knowledge Today First Published: August 16, 2017 you can download this article from

The followings are certain common issues and challenges faced by the domestic workers during their work at households. Let's have a look upon those:-

1. Problems of invisibility:

The ever increasing demand for domestic workers⁴ in private households did little to secure them their rights and privileges. But due to work pressure, unsecure environment and low wage rates they lost their interest and are gradually shifting towards the other industries such as construction and manufacturing industries.

2. Under payments:

Under payment continue to be a problem for domestic workers. One can attribute this mainly to the perception that domestic work is not real work. There is gender-based pay gap discrimination in domestic work too. Cleaning, washing, cooking, laundry among others are construed to be predominantly a woman's natural work.

3. Discrimination:

Discrimination on grounds of caste is evident too. Undignified work is assigned to the domestic workers because they to a particular class hitherto considered being 'lower caste'. Practices of untouchability have a physiological bearing in the minds of workers. After all, they are 'workers' too. The work is caste-determined, for instance, 'upper caste' women are employed in works like cooking while 'lower caste' women are employed in cleaning washrooms.

4. Unregulated working hours:

Unregulated working hours have done enough damage to their lives already. There is no fixed number of hours, and even if there are any the rules aren't considered by the employers. Often, they are made to work overtime, with no benefits at all. Absence of any job security even after working between 8 hours and 18 hours a day is a dismal condition.

5. Paid leave:

Although the Minimum Wage Act of 2008 entitles every registered domestic worker for *paid leave* and a weekly off, workers do not receive these benefits from their employers. They are either fired or made to work under worse conditions if they try to raise voices against their employers. Considering the rising supply of domestic workers, it is hard to find another job once fired. Child labour, discrimination on grounds of religion and race still haunt domestic workers in India.

6. Dignity, Respect And Professionalism:

Domestic work is a work like no other and should be considered as a work like any other. Treating domestic workers with dignity, respect and professionalism forms an essential part of this transformation. This will also have positive implications on gender pay gap and gendered discrimination. We are also in dire need for initiating discussions about domestic workers in India.

7. From helpers to workers:

There are laws in India that protect the interests of domestic workers. For instance, the Domestic Workers Act of 2008 was introduced to regulate the payment and working conditions of household workers. It also addressed the issues of trafficking of women and exploitation of workers. However, it is the individual states in India that govern its implementation, leading to lack of uniformity in the guidelines across the country. Besides, India is a signatory to the Convention 198-C of International Labour Organization⁵ that deals with safeguarding the laws of domestic workers. But India has not ratified it yet. Ratifying the convention implies that the provisions of the same are included in the domestic laws too. Other acts like Social Security Act of 2008 and Sexual Harassment at workplace act (Prevention, Prohibition, and Redressal) Act provide protection to domestic workers in India. Yet, there is a need for a comprehensive and uniform legislation for safeguarding the rights of domestic workers. A draft bill was made under the pressure of National Platform for Domestic Workers in 2017 that still remains to be a draft. With provisions like setting up of welfare boards, registration of workers in welfare boards, accidental insurance coverage, health coverage and pensions, the draft bill is close to an ideal act. The government can also take help of NGOs and domestic workers' unions in drafting the bill. Making them a part of the policy making process is essential to address their concerns.

It is high time that we stopped calling our Bhais 'helpers' instead of 'workers'. A rights-based approach to this problem will help understanding it even better. Domestic workers also have their rights, protected by the constitution and various other legislations. A rights-based approach will condemn the present scenario where their rights are abrogated in every possible way. Domestic work is a work like no other and should be considered as a work like any other. Treating domestic workers with dignity, respect and professionalism forms an essential part of this transformation. This will also have positive implications on gender pay gap and gendered discrimination. We are also in dire need for initiating discussions about domestic workers in India. It is saddening to know that such discussions are seldom heard of, be it in the parliament or at the household level. Enacting the laws is not the solution, effective implementation and inspections only can solve the problem. Let them work with dignity. Let them live with respect. Let them enjoy their rights. Let them not bear the brunt of parochialism. Bearing in mind the need to recognize domestic workers and their dignity, it is high time that we discussed about them on larger platforms and safeguarded their rights.

Some other challenges⁶ faced by this category of workers is due to the following reasons:

- (a) Inadequate income of the family;
- (b) Unemployed adults;
- (c) Absence of scheme for family allowances; and
- (d) Large family etc.

⁵ "Some Aspects of Social Security Measures in India", BHATACHARYA, V.R., Metropolitan Book Co Delhi, 1970

⁶ Armacost, Nicola Cunningham, and Nicola Cunningham. "DOMESTIC Workers In India : A Case For Legislative Action." *Journal of the Indian Law Institute* 36, no. 1 (1994): 53-63. <http://www.jstor.org/stable/43951513>

8. Illiteracy:

The higher rate of illiteracy shows the ignorance of parents, so they push their children to work force which is a supply factor and contributory cause for child labour. Parents do not think better future of their wards. Especially rural/migrated parents, tribal and people staying in slum areas do not understand their responsibilities and hence children are deprived of their right to education and development.

There is a very close nexus between child labour and illiteracy and they go hand in hand and each one supports the other. Some studies have revealed that most of the child labours are either total illiterate or partial illiterate and their parents are illiterate. No study has ever found a child labour coming from an educated family. Greed for money, and gross ignorance on the part of the parents in not sending their children to school is a sad commentary and condemnable.

9. Population Explosion and Large Family Size:

In a developing country like ours, everything is regulated by population. Population explosion is an important and major factor for the problem of child domestic labour. Parents due to their ignorance believed that children are God Gifted, great human resource and continued to go on increasing the family size is a misconception and they understand that more children means more income, they generate. Consequently large family size is burdensome and liability for them especially for poor, to tribal backward families.

10. Population Statistics:

According to 1971 Census, population⁷ of India was 548 million and in 2001 it was 1028.70 million. By the turn of 2016 the population is expected to reach 1264 million. Such a massive increase in numbers will affect economic development and require massive inputs for social services, civic amenities and infrastructure development.

Child population records 398,306,000 and interpretation of 2001 Census figures of the National Labour Institute indicate that, out of 203 million children between the ages of 5 and 14, 116 million are in schools, 12.6 million are in fulltime employment and the status of 74 million is unknown. Most, if not all, of the 87 million, not in school, do house work on family farms, work along side their parents as paid agriculture labourer's, work as domestic servants, or are otherwise employed.

11. The tradition of making children learn family skills :

Most traditional families believe that a child is born to them to earn more for the family. The child is just another source of income⁸ and traditional business families in fact put the child into business rather than send them to school. Under the pretext of training them, they make them work for hours, sometimes resorting to physical torture in case child makes mistakes. There is a myth that child labour is necessary to preserve traditional arts and crafts. Children bonded to families or who are hired labour are never taught the actual craft. Learning of a particular art or craft by children within their families, as part of their socialization, should be integrated with their education. Children should not be sacrificed at the altar of

⁷Article by Gangabhusan M. Molankal, Child Labour in India an Overview. <http://www.childjustice.org>

preserving traditional art.⁴⁴ There is another argument which advocates that work equips the children with skills for the future is a contributory factor to child labour⁹.

12. Unemployment and Under Employment :

Child domestic worker is as much the cause as consequence of adult unemployment and under employment. It supplements and buttresses the family income. Child labour is not only a subsidy to industries but a direct inducement for payment of low wages to adult workers. The entrance of the children into the labour market reduces the opportunities of employment for the adult and lowers the bargaining power of adult workers. Child labour involves the use of labour as its point of lowest productivity. Hence it is an insufficient utilization of labour force.

SUGGESTIONS:

- Domestic workers should be paid minimum wages for the amount of work done by them and also enjoy the privileges and benefits that all other form of workers receive without discrimination such as pension, paid leave, bonus, incentives etc.
- A proper regulatory measure is to be implemented for domestic workers through a legislative mechanism as they migrate from one place to another in search to living.
- Workers should be made aware of state regulation specific policies and legislations for the protection of their rights and duties.
- Draft of national policy of women domestic workers to be completed and implemented by the central government for women to reap its benefits.
- In Public Distribution shops there should be a separate section of allocation of nutritional foods such as millets,ragi,jowar and others to these workers to protect them from Mal-nutrition
- Medical benefits such as maternity benefit, ESI, Sick allowances, are to be provided as these women come from lower class society.
- Strict penalty and punishment is to be imposed for those who exploit women sexually
- Trafficking of women and other young household workers is to be tracked and record is to be maintained to prevent from kidnapping, exporting to other countries and such other crimes.
- Government can also work on providing cash incentives to these unpaid workers
- SEWA provides community insurance schemes which can be accessed for health care services.
- Various women empowerment websites and wings are open to access and seek support in terms of emergency situations where they provide financial assistance and moral strength to deal with the situation.
- Under policy for domestic workers they should have right to register as workers with the state labour department, in order to facilitate their access to rights and benefits accruing to them as workers.
- They also be provided the right to form their own associations, trade unions, protection from abuse, harassment and violence.
- An establishment of a mechanism to be done for regulation of placement agencies.

⁹ "Some Aspects of Social Security Measures in India", BHATACHARYA, V.R., Metropolitan Book Co Delhi, 1970

CONCLUSION AND SUGGESTION:

Absence of any legal protection and any special law which led to severe exploitation of domestic workers which includes men, women and children and depriving them from their entire constitutional and basic rights in absence of proper food and living/sleeping condition, proper salary, forced and total cut off from their family members, bounded labour, sexual exploitation by agent during transit, at the office of agency and at the work place in houses of employers, The list of exploitation is endless and frequently reported upon by the media but no action has been taken by neither Government neither any state agency for the development and upliftment of these category of workers. This is the need of time to framework a law relating to protection of this poor group of workers and through this article the author aims to examine the status of domestic workers in the country and the legal framework for decent work for domestic worker in India.

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