

CONDITION OF DOMESTIC WORKERS IN INDIA: PAST, PRESENT & FUTURE

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ABSTRACT

Domestic help is an essential part of almost every middle-class family in the country. But little or no light is focused upon their concerns and grievances. The pandemic has turned to be a major reason for the downfall of the informal sector leading to migration and unemployment. The domestic helpers not only suffer the ignorance of government and their policies which merely focuses upon the formal sector but also faces the thrashes of the urban upper class and middle class who take their services casually and tend to take away their rights. This paper tries to articulate the problems, issues and exploitation faced by the domestic help and analyses the existing legislation dedicated to the unorganized sector which includes the domestic workers as well. Discussion about how the care work provided by them is taken for granted and how the laws made of them aren't necessitated and executed properly by both state and central governments in the past. The application of the previous laws and the current bills in the parliament will be taken into the picture to analyses what the future holds for the marginalized community of our society. The paper also suggests which areas need to be focused upon while addressing problems of the discussed sector like child labor, gender inequality, migration etc. The application of the four new Labor Codes namely Social Security Code, 2019, Wages Act, 2020 etc. to the unorganized sector and suggestion of blending laws presently covered under formal sectors and family laws with rules of the unorganized sector to ensure rights of the vulnerable society.

INTRODUCTION

Every day, tens of millions of people clean other people's houses, cook their meals and keep an eye on their children all over the world. Their efforts contribute to national economies and employment opportunities by allowing others to carry out their tasks in their own occupations. Domestic employees, on the other hand, are frequently overlooked as genuine laborers, but one of the most important workers in vulnerable groups. There are only approximately ten. The majority of them are regulated by labor laws to the same extent as other workers, even though

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more m More than a quarter of the population is completely excluded. More than 80% of those employed in the industry are women. Women, many of whom are migrants and members of the community of underprivileged communities forced labor, child labor, and physical violence are among the human rights violations that have an impact on women and girls in domestic work. However, abuses also include long hours of arduous work without rest and unfair pay practices such as excessive deductions for accommodation and food. Such abusive conditions are widespread and have particularly serious consequences for domestic workers and their families. Indeed, without basic needs and material provisions being met, millions of women and girls are not able to realize their human rights and live-in freedom and dignity. So long as there's a mentality that the domestic may be a private space indeed when it's a work environment, and residential work is fair housework and not 'proper' work, the lack of concern of the State towards the predicament of Household Workers will continue. Domestic workers come from defenseless communities and backward regions. The larger part is destitute, uneducated, awkward, and do not get it the urban work showcase. Their work is belittled, comes up brief on, and is ineffectually controlled. Require of conventional compensation, work conditions and characterized work time, violence, mistreating, sexual bullying at the working environment, victimization at the hands of traffickers/placement organizations, constrained relocation, the need of welfare measures, and need of ability improvement roads coming around in stagnation are major issues that they confront. There is of being that as it may no information on the exact number of residential specialists in India. The gauges move from 4,75 million (NSS 2005) to over 90 million concurring to distinctive sources.

Status of Domestic Labour-NSSO 2004-05

Category of Worker	Number of Workers	Percentage of Total Female Employment	Female Share in Employment (%)
Housemaid	2,381,100	1.6	87.4
Cook	96,600	0.1	73.9
Governesses	69,600	0.0	74.2
Total number	2,547,400	1.7	71.6

Source: Neetha and Palriwala 2011: 102

SCOPE & SIGNIFICANCE

Despite being a common feature in everyday life, domestic work has received little attention in contemporary socio-legal discourses. In India, there is no comprehensive framework for either regulation of domestic work, or for protection of those engaged in it. This paper tries to give an overview of the issues surrounding the regulation of domestic work, the need for protection and proposes alternative theoretical models that could be considered while legislating for the domestic workspace.

LITERATURE REVIEW

Domestic labor is no longer atypical work. The trends in globalization that were the results of flight and growth of capital wherever other factors of production are relatively less expensive have led to change in the pattern of labor types. Labor market deregulation in developing countries has ensured that the transition has been from permanent to temporary, formal work to informal work including micro-enterprises and home-based work, direct employer-employee relation to subcontracting and outsourcing work. In informal labor, there are further categories like self-employed workers, unpaid workers in family enterprises, casual workers and subcontracted workers. Each of these categories brings with it, a unique set of livelihood conditions from wage rate, working condition, ability to organize and collectivize and general autonomy and security both of the worker and of the work itself. That the majority of those workers employed informally are women in these developing economies does not come as a surprise. With the structural changes in the economy and social relations inflicted by international processes like globalization, there are increasing opportunities of a particular kind in particular spaces- for instance, outsourced work in urban towns that require some skill-building and greater flexible conditions of work from the point of view of the employer. These jobs that come to the shores of the developing world, be it domestic work or a business outsourced work, have transformed the role and status of women in traditional societies. From housework and family care, an increasing number of women in small towns and big cities are moving out for work and this work largely involves labor of an informal kind. This essay is an attempt to capture one such important segment of work called domestic labor

To consider and understand the subject of research, statutory provisions are taken into account such as Unorganized Social Security Act, 2008, Sexual Harassment against Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 and Minimum Wages Plans notified in different states. Labor legislation in India appears that household workers are not included in the Scope of a few work laws since of the imperatives in definitions of “workman”,

“employer” or “establishment”. The nature of their work, specificity of the employee-employer relationship, and working environment is a private household rather than an open place or private establishment, which avoids their scope from the existing laws. Indeed, Placement Organizations elude from the ambit of the work laws, since of such definitional issues. To incorporate the Domestic Laborers beneath these laws, definitions will have to be revised.

A few Laws that require such revisions incorporate Minimum Wages Act, 1948; The Maternity Benefit Act, 1961; Workmen's Compensation Act, 1923; Inter-State Migrant Laborers Act, 1979; Payment of Wages Act, 1936; Equal Compensation Act, 1976; Employees State Insurance Act, 1948; Employees Provident Fund Act, 1952; and the Payment of Gratuity Act, 1972. There has been an endeavor at making a law inside the Nation in form of ‘Domestic Laborers Welfare and Social Security Act, 2010’ Charge, drafted by the National Commission for Women (NCW) which endeavored to bring this expansive and vulnerable work drive of Household Laborers into the standard and help address the complaints around the unpaid compensation, starvation, inhumane work hours and verbal, physical and sexual abuse. The proposed law was implied for the Household Laborers over 18 years of age and clearly expressed that no child might be utilized as a residential worker. But a small advance has been made in passing this charge so distant. After Independence, the Government passed more than 40 Central Labor Legislations. But these legislations have profited only laborers utilized within the organized division when in genuine reality almost 93 per cent of the work falls into the category of unorganized sector. State Governments of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan and Tamil Nadu have taken a few steps to move forward working conditions of Domestic Laborers and to supply get to to the Social Security Schemes. The Government of Rajasthan has upheld fixed minimum wages for Household Help and has set restricted working hours. The move comes after the A State Work Department’s notice dated December 21, 2015, which had said execution of the work changes within the unorganized segment. Minimum Wage has been set at Rs 5,642 per month for an eight-hour day which can incorporate cooking, washing, child sitting and other everyday chores. It is exclusive of nourishment, clothing, and other benefits.

METHODOLOGY

The research methodology will consist of both doctrinal as well as non-doctrinal research methods. The doctrinal method will consist of a review of existing acts, articles, bills and case studies of some unorganized sectors.

LIMITATIONS

Research could not cover a vast area of review due to the limited time constraint

The ongoing pandemic hindered the interaction with people being interviewed

The bills being in the process of discussion, a clear picture could not be drawn for the near future.

WHO IS A 'WORKER'?

Definition of Employee under various Acts

The Apprentice Act, 1961

"Worker" means any person who is employed for wages in any kind of work and gets his wages directly from the employer but shall not include as apprentice referred to his clause.

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

"employee" means any person who is employed in an establishment to do any work for remuneration;

WORKMAN UNDER THE INDUSTRIAL DISPUTES ACT 1947

"workman" means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute

EMPLOYEE'S PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

Any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person- employed by or through a contractor in or in connection with the work of the establishment; engaged as an apprentice, not being an

apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment.¹ Domestic employees are rarely recognized as 'workers,' and their work is frequently overlooked. They have a lower social status and, as a result, a poorer social position. Workers in the informal sector, for example, are affected by the economy. It is largely excluded from the realm of 'real labor' or 'legal employment. The informal sector workers in smaller units are automatically excluded by the levels in labor regulations meant for industrial units and domestic employees, in particular, where there may be only one worker. In addition, the statutes' definitions of "workman," "employer," and "establishment" exclude their application to the domestic workplace. Domestic employees are classified as "self-employed", reflecting the states' ongoing efforts to exempt employers from any legal obligations. The unwillingness to accept private homes as workplaces and an apparent desire to satisfy an ever-growing number of people "servant-employing", middle and upper households from different social classes have contributed to this illogical exclusion of employers from all legal obligations!

PRESENT LEGISLATION

Despite voting in favor of the International Labor Organization's Domestic Workers Convention in 2011,¹²⁷ India has yet to ratify it. Domestic workers, like the rest of the informal sector, have had their issues mostly neglected by legislators. The earliest legislation was a private member's bill passed in Rajya Sabha called Domestic Workers (Conditions of Service) Bill 1959. This bill was allowed to lapse. More than a decade later bills with the same title were introduced in Lok Sabha in 1972 and 1977 respectively which purported to bring Domestic Labor under the purview of the Industrial Disputes Act 1947. The recommended suggestion to bring domestic labor under the act was made by the Union government appointed Committee of Status of Women in India 1974. The earlier attempts at national legislation failed to gain momentum; neither the Domestic Worker (Conditions of Service) Bill, 1959, nor the House Workers (Conditions of Service) Bill, 1989, received any attention or were enacted into law. There was very little backing from state governments, including implementation, monitoring, and evaluation. As justifications, law enforcement was stated. When the Housemaids and

¹ Srivathsa Desikan Narasimhan, DEFINITION OF EMPLOYEE AND WORKMAN UNDER VARIOUS ACTS SCRIBD (2019)

² Armacost, N. C., & Armacost, N. C. (1994). "DOMESTIC WORKERS IN INDIA: A CASE FOR LEGISLATIVE ACTION". Journal of the Indian Law Institute, 36

Domestic Workers (Conditions of Service and Welfare Bill) of 2004³ was introduced, it was the first concrete attempt. The State and the Central Government are now responsible for ensuring that all workers who fall under their jurisdiction are required to be registered. This bill also mandated that the government adopt regulations to ensure that domestic employees have adequate employment opportunities and medical benefits as well as other social welfare programmes. To ensure compliance with the registration norms, employers who were engaging in unlawful activities should be met with heavy fines including fine and simple imprisonment. Two recent developments, however, indicate a positive shift in the pattern.

The Maharashtra Domestic Workers Welfare Board Act, 2008, was passed first at the state level. It proposes the establishment of a Domestic Labor Welfare Board. Having employers and domestic workers both represented, and is tasked with offering benefits to the latter in the event of an accident, as well as financial aid for children, medical costs, and maternity benefits, among other things. On a national level, in 2009, the government established a task force for domestic workers, tasked with developing policy suggestions. It produced a number of reports and suggestions. Domestic worker awareness is encouraged as part of a national policy for domestic workers, suggesting changes to work as a "legitimate labor market activity existing labor rules, ensuring that domestic employees have access to labor rights. In this context, the government has taken a few initiatives lately, in which it tries to broaden the application of a few formal rules. Domestic employees will be covered by legislation relating to minimum wages and overtime pay. This seems to have brought the sector's problems to the foreground, with some progress being made. Several new bills have been introduced recently, and are now being debated in the legislature like Domestic Workers Welfare Bill, 2016. It includes within its ambit both migrant and minor domestic workers, prescribes working conditions and terms of employment, mandates collection of a cess from employers for maintenance of a social security fund and requires employers/placement agencies to register employees.

Earlier bills only sought to regulate basic labor entitlements such as work conditions and hours instead of recognizing worker's rights, duties of employers, and even envisage a distinct institutional mechanism. The lack of political will and support, in addition to there being little public discussion have so far prevented any of these being passed in Parliament. Thus, there

³ THE HOUSEMAIDS AND DOMESTIC SERVANTS (CONDITIONS OF SERVICE AND WELFARE) BILL, 2004

still exists a major legislative void in for the legal protection of domestic workers. Let us discuss some of the most relevant bills and acts among the efforts in detail in the next chapters.

THE UNORGANIZED SECTOR SOCIAL SECURITY ACT, 2008

The Unorganized Workers' Social Security Act⁴ includes within its ambit domestic workers.¹⁷⁹ The main focus of the bill was to take steps to ensure the social security and welfare of the members of the unorganized sector (which includes the domestic worker). It envisaged setting up a Central level board which would make recommendations regarding social security schemes such as health, maternity benefits and retirement benefits.¹⁸⁰ It set up a National Social Security. The unorganized worker, employers, and the government are all represented on the Board and the State Social Security Board. They have been reduced to advising and oversight positions in the creation and implementation of plans, with little capacity to make a real difference. The Act has been criticized as being woefully inadequate, as it is merely a compilation of existing schemes with no penalties or even working-conditions provisions. Furthermore, it necessitates beneficiary contributions, which, given the low wages of these workers, renders the endeavor worthless. In any event, domestic employment raises concerns that, while some of them overlap with those of the rest of the unorganized sector, the majority of them are unique to the business. However, the Supreme Court has recently dealt with the Act's implementation, noting that the National and State boards intended by the Act had not been established, and ordering the government to do so within a specified time frame. The Court has expressly looked into the matter of registration as part of this case, directing the start of the registration procedure and the issuance of identity cards. The National Legal Services Authority ('NALSA') said it was difficult to find domestic employees and that they were unlikely to come forward willingly for registration. In August 2017, the Supreme Court ordered the Delhi government to launch a pilot project to ensure that domestic workers in the city are covered by the Unorganized Workers Social Security Act, 2008. To guarantee smooth registration, the Court urged the government to ensure that all duties are carried out equitably and efficiently. The Labor Department, in collaboration with RWAs, and NALSA, through its paralegal volunteers, might address the issue of domestic workers, according to 193 appellants. The importance of a proactive campaign by the Taluk Legal Services Committees' para-legal volunteers was also emphasized. While the success of the lawsuit is still being examined, there

⁴ The Unorganized Sector Social Security Act, 2008

may be room for improvement in the application. This however does not take away from the substantive shortfalls of the enactment itself.

EXPLOITATION OF DOMESTIC WORKERS

Unpaid salaries, lengthy working hours with few to no breaks, ambiguous nature of job and insecurity of employment, as well as confinement in the workplace, are all examples of exploitative and discriminatory practices in the Indian domestic work industry. Workers are subjected to lengthy hours of hazardous work with no concept of paid or sick leave. The domestic work industry does not require specialized skill, and on-the-job training is common. This exposes the industry to a vast pool of potential employees, and a big number of replacements are readily available, leaving workers with minimal bargaining power. This is exacerbated by domestic workers' lack of access to the limited available legal remedies, which is aggravated by their lack of education, which forces them to a precarious living.⁵ When workers demand a change in working conditions or even request remuneration for work done, employers may simply reject the request or even to the point of physically abusing the employee. Physical and even sexual abuse is widespread even in non-abusive situations. Domestic servants are particularly vulnerable to physical and sexual abuse since they spend so much time inside the employer's private home. abuse, with the situation for female domestic employees being significantly worse. Domestic workers are among the women who are most vulnerable to job harassment. Most of the time, nothing was done about the harassment. This is primarily due to their fear of losing their employment, which they require for survival. A lack of an effective complaint resolution system, and a lack of understanding of any redress mechanism in place, and, on top of all of this, the inexorable march of time. Fear of being stigmatized in the community, which inhibits them from changing employment.⁶ Given the less-than subsistence level of wages, they have to take loans from the employer. Employers exploit this scenario, inflate the debt with charges, making it impossible for the worker to pay back and thus trapping the worker in a vicious debt cycle. The employers may also withhold or delay the paycheck leaving the worker completely dependent on the employer for their basic needs. Even holidays promised in the initial working arrangements are not extended to the domestic worker.

⁵ Bipul Hazarika, et al., Indian Women: Rights, Economic Position and Empowerment, Centre for Women's Studies (2002); Ragini Bhuyan, Who'll Cry for Domestic Workers? LiveMint

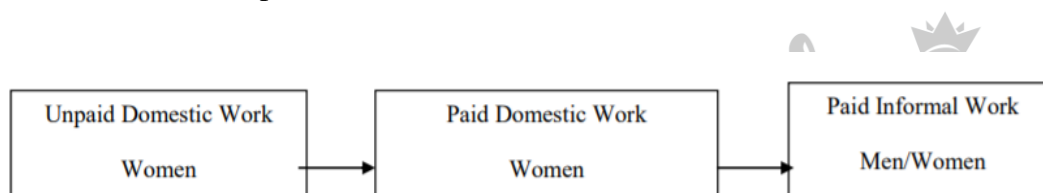
⁶ DIVYANSH HANU (2017), "SITUATION OF DOMESTIC WORKERS IN INDIA" Journal of the Indian Law Institute

WHAT NEEDS TO CHANGE

The existing bills do not provide any guidelines on substantive protections. Furthermore, the bills do not provide any instructions on ensuring proper implementation; rather they are left to the discretion of the State and Central governments, already known for their inefficiency and apathy. The bills do not go far enough, and have several roadblocks to effective implementation. For instance, in Maharashtra Domestic Workers Welfare Board Act, 2008 First, the benefits are contingent upon registration under the Act, but the onus of registration is upon the worker, who is required to submit all prescribed documents and a fee. Hidden within private homes, unaware of such beneficial provisions and often lacking necessary paperwork, this excludes most of the domestic workforce. Second, it requires the worker to contribute to the fund and a financial waiver is based solely on the discretion of the Board with no guidelines to exercise such discretion. As previously said, the legislative reaction has been woefully inadequate, and even tiny measures like inclusion have proven ineffectual. The policy approach has a number of serious flaws. First, the government has been hesitant to regulate the industry, owing to a lack of motivation and apprehension about interfering in the private domain. Second, its haphazard attempts to apply existing rules to the sector reveal a lack of understanding of the unique characteristics and nature of domestic 'care' work, which cannot be accommodated within laws meant for public employment. It is clear that there is a lack of political will to address the issue of domestic workers. This is inextricably tied to the issue of devalued and gendered housework, as well as socioeconomic disparities. Male-dominated legislatures, the majority of whose members are likely to hire domestic servants, will have little incentive to pursue the matter. Furthermore, unlike traditional labor organizations, which have large vote banks, domestic employees are dispersed and invisible, giving them little or no political power. Around twenty three percent of all working children are employed in the domestic worker industry. Child labor is intrinsically connected to social and cultural patterns, and is even seen in positive light, especially for girls, and only contributes to the growing problem of child labor in the industry. Poverty, lack of education, and unstable, violent households only add to these numbers.⁷ Low salaries, excessively long hours of work, and a lack of social protection define the informal economy in urban regions. Migrants lead a life of low quality, presumably reflected in their low human development, because they earn less than what is required to make a comfortable living in metropolitan areas. The migrants are living in

⁷ Myron Weiner, "THE CHILD AND THE STATE IN INDIA": CHILD LABOR AND EDUCATION POLICY IN COMPARATIVE PERSPECTIVE, Princeton University Press, 2018

horrible conditions and are in poor health. Women migrants are the hardest hurt in such a situation because they are paid less than their male counterparts and do not have access to basic health benefits such as maternity leave. Furthermore, for migrants, the duration of labor in areas such as construction is highly unpredictable, leaving them with a sense of financial and employment instability. The separation of workplace- home is a product of a brand of capitalist industrial development that formally recognized the male industrial worker at the cost of the more communitarian workers in agriculture, artisans and family care work carried by women over generations. This dichotomy has made the contestation of working condition and the employer-employee relation difficult in home-based work. Analyzing worker identity of the domestic laborer reveals the complex picture of her identification with unpaid domestic work on the one hand and the paid informal work on the other⁸.



MERGING SECTORS

Domestic care labor cannot be categorized as "unskilled," "trivial," or "for pleasure." It requires extensive management skills and might be a challenging prospect for someone who is unfamiliar with it. It demands a lot of hard effort and a variety of talents, which are mostly learned on the job. The primary mistake that underpins any attempt to conceptualize this sector is the failure to recognize human talent in care work. The relationship skills required for childcare or nursing are widely undervalued, with remuneration around the world equating solely physical labor to any other manual labor. Good quality care work, on the other hand, is more than just manual labor. These activities help others develop, and they're at their best when they're accompanied by genuine emotional commitments of 'caring feelings.'⁹

The approach of the Indian legislature has been clearly incompatible with the needs of domestic care workers and a blanket extension of formal sector labor regulations may not be the best legislative response. To avoid an imposition with inadequate protections at best and disastrous consequences at worst, an in-depth understanding of the 'worker' and the 'workplace' in

⁸ (Neetha and Palriwala 2011: 100) as depicted in figure 1.

⁹ Neetha N, Minimum Wages for Domestic - Work Mirroring Devalued Housework, 52 ECONOMIC AND POLITICAL WEEKLY

domestic care work has to inform any legislative intervention.¹⁰ The extension of laws made for the formal sector towards the unorganized sector might provide some quality of care and protection of rights of the domestic help in our country. The following laws may be included with some amendments as needed:

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

This Act aims to protect domestic employees by establishing a grievance redress body having the authority to award monetary compensation. However, beyond the limited definition, this does not address the more serious sexual crimes of harassment in the Act. Proof of employment too is difficult to produce. Required amendments should be made in the acts to incorporate 'homes' as workplace and provide workers a system, especially women, to address their remedies regarding exploitation and abuse. While on the one hand, the employer and the employee have a bond of trust and care, giving the relationship a personal touch, on the other hand, this makes the latter more prone to exploitation and leads to internalization of unfair methods and treatment. Thus, unlike formal industrial work, the care business is intrinsically social, with the personal nature of connections between care-givers being a feature of the job. It becomes critical to comprehend the human element. Extending the current dehumanized regulatory framework to the care industry is not a well-thought-out legislative solution.

These rules were originally designed to address mechanical employment that arose as a result of the industrial revolution, but they have since been expanded to include jobs in the formal sector. To strike a balance between profit maximization and worker rights against exploitation, they establish minimum standards and, in recognition of employees' social security demands, impose some correlative duties on employers. Care work cannot be understood as provided only within intimate relations; neither can it be viewed purely as a commodity that is marketable. Such polarization only reinforces stereotypes of caregivers into rigid categorizations of "cold, third-party providers or as equally faceless beings who give selflessly for the well-being of others". Domestic care work cannot be labelled as being 'purely contractual' or as entirely a family affair. The complexity of care needs to be understood in the multitude of relationships in which it occurs. A contractual agreement that defines some non-negotiable minimums or attracts the application of labour regulation would seemingly address

¹⁰ Neetha N., Minimum Wage Setting Practices in Domestic Work: an Inter-State Analysis, International Labour Office (2015)

these concerns. In such a fluid labour market, to expect contractual engagements to resolve the issues facing domestic workers would be optimistic at best. Further, as enforcement is voluntary, care-workers are often reluctant to seek legal recourse. This might be based upon emotional ties with those they care for.¹¹

Hence, the merging of different kinds of laws together like organized sector, family laws under one umbrella which very well encompasses the unorganized sector is the need of the hour. This aspect is discussed under the upcoming chapter of Labour Laws, 2020 which is an attempt to present the future aspect of the unorganized sector with respect to present bills in the legislations or the recently passed laws.

As the world shutdown during 2020-21 and everyone was stuck at home with no permission to allow domestic help in various places and societies fearing the spread of the virus, it proved to be a major shutdown for the domestic help market up to a level where they were not in a state to afford even basic commodities and food for their family. They had to rely on subsidized food grains provided by the government or non-governmental organizations distributing food. Currently, the number of households receiving government aid is just a little over the pre-pandemic levels. This reflects that the government did deploy targeted relief packages during the pandemic.¹² The pandemic-induced fall in employment was accompanied by depressed incomes. Previously, 56.8% of the workers were earning in between Rs 3,001 to Rs 6,000. However, only 22.8% of the workers were able to earn this during the lockdown. The number of workers earning low wages (Rs 1 to Rs 3,000) increased from 30 to 33. Some of the workers also decided to displace themselves in search of better standard of living or returned back to their native places leaving the big cities abandoned. This not only proved to be a major downfall of the economy but the disappearance of the helping hands created a menace everywhere. Since [76.2%](#) of the workforce in the domestic worker segment are female, the economic impact of the pandemic has differently affected the group with catastrophic [gender-based consequences](#). When it comes to domestic employees, the line between office, factory, and site blurs since their workplace is unique — it is someone else's house, not an office, factory, or site. We do not envisage a place of employment when we refer to these locations as "households." This discreetly practiced ignorance promotes worker invisibility and informality,

¹¹ Helma Lutz, Domestic workers and migration in *The Encyclopedia of Global Human Migration* (Immanuel Ness, 2013).

¹² Piu Mukherjee Bino Paul G D *et al* (2020)., "Migrant Workers in Informal Sector: A Probe into Working Conditions"

making it harder for their voices to be fairly represented in an already stratified labour landscape. Female domestic employees are focusing on improving their existing conditions by seeking jobs now that the dark days of lockdown have passed. The gradual economic recovery is on their side, but outcomes will not significantly improve unless they are given the legal and policy attention they deserve.

DOMESTIC WORKERS WELFARE BILL, 2016

Shashi Tharoor, a Congress MP, introduced the Domestic Workers' Welfare Bill, 2016 in the Lok Sabha in August 2016.

Let us take a look at some of its key characteristics, which include the following:

A Private Residence and a Workplace

Domestic work is defined in the bill as work done in or for a private household(s), which includes cooking, cleaning, housekeeping, driving, gardening, child care, and old-age care, but excludes work related to enterprises run from private residences. Defining houses as a workplace and not recognizing them as a "private area" would be a huge step toward ensuring domestic workers' rights. The proposed bill defines a 'Domestic Worker' as a person employed to perform domestic labour for one or more employers for remuneration, whether in cash or in-kind, by residing at the household premises or otherwise, and includes casual, temporary, contractual, and migratory workers. Children under the age of 18 who work as domestic workers are entitled to certain benefits. The National Commission for Women proposed a bill in 2010 that made it illegal to hire domestic employees under the age of 18. A 'Minor Domestic Worker,' according to the 2016 Private Member's Bill, is someone who is over sixteen but under eighteen years old and has completed compulsory elementary school.

Wages Defined More Clearly

Wages are defined as all payments stated in money under the proposed bill but do not include the value of any accommodation (rent), provision of light, water, medical attendance, and so on. On dismissal, the employer would also be obligated to increase his or her payment to any social security plan or insurance, as well as provide travel allowances or concessions and any other compensation.

Contract Registration

Employer or Placement Agency would have to, within two months of the commencement of the employment of a domestic worker, register the employment agreement and get it verified by either the local Panchayati Raj institution or the local urban body, the resident welfare association, or a non-profit organization working among domestic workers.

LABOR LAWS, 2019

While passing the long stuck four Labour Code in the parliament, Santosh Kumar Gangwar, Minister of State (Independent Charge) for Labour and Employment stated that, “So far, most of the policies and schemes catered to the organized sector workers only, whose number ranged from 9 to 10 crore. And there are approximately 40 crore unorganized sector workers. Nobody thought about them. But now we are trying to bring them under the ambit of labour codes so that they get the maximum benefit,” he said.

For the first time, Gangwar said, the labour code will universalize social security coverage for unorganized sector workers including migrant workers¹³

The Code on Social Security 2020 consolidates existing legislation on The Employees Compensation Act, 1923; The Employees Provident Fund and Miscellaneous Provisions Act, 1952; The Employees State Insurance Act, 1948; The Maternity Benefit Act, 1961; The Unorganized Workers’ Social Security Act, 2008; The Payment of Gratuity Act, 1972; The Employment Exchanges Act, 1959; The Building and Other Construction Workers Cess Act,

1996 and The Cine Workers Welfare Fund Act, 1981. In doing so, however, it has dealt a severe blow to labour protections, particularly for informal workers. Despite the historical exclusions faced by the workforce, including migrant workers, which were highlighted during the Covid-19 lockdown, the Code does little to bolster social protections and includes vulnerable workers in many ways. An attempt was made to cover larger section of the workforce under the new definition of “worker” in The Occupational Safety Health and Working Conditions Code (OSHWC Code), 2020. Section-2 defines a worker as any person employed in any establishment to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as well as sales promotion employees. This however, still

¹³12Mark Canada, (2020) “Why the new labour codes leave India’s workers even more precariously poised than before” *Scroll.in*

does not include the domestic help in many ways, but it is an appreciable effort. The Code on Wages, 2019, applying to all the employees in organized as well as unorganized sector, aims to regulate wage and bonus payments in all employments and aims at providing equal remuneration to employees performing work of a similar nature in every industry, trade, business, or manufacture.

CONCLUSION

The 'Domestic Workers' are subjected to a 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 sections of Indian society. They deserve proper care, protection and measures for empowerment in modern society on the basis of humanitarian considerations. The 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. 'Domestic Workers' constitute a large population of the workforce, have been absent from the legal landscape of labour laws of the country. The nature of employment, employer-employee relationship and indeterminate work environment are amongst several factors to deny the statutory benefits to 'Workers'. The absence of statutory safeguards makes the workers vulnerable and reasons to exploit them from the hand market forces. 'Domestic Workers' are not considered significant enough components of the labour force and hence, adequate redressal mechanisms in law or policy are absent. This flows from the idea that the home is not and cannot be a workplace. The labour market refuses to acknowledge the 'Domestic Workers' as 'workers' under employment-related laws. The Government has framed "The Unorganized Sector Workers' Act, 2008 to better the livelihood conditions of 'Domestic Workers'. Non-availability of the jobs in rural or tribal areas, such as Jharkhand, facilitates the continuous supply of women workers to Delhi and the other cities. India is also a source and transit route for trafficking women and girls to the Middle East for domestic work. In this process of migration, there are risks, particularly because of the deceptive recruitment practices or abuses at hands of the workers' employers. Only Central Law can meet requirements of regulating the Domestic Workers sector since workers also frequently cross the inter-state boundaries. The Domestic Workers are also caught in the trap of the agents who supply them to the placement agencies or even harass or traffic them for other forms of forced labour is a

reality. There is also a need to develop a separate piece of legislation dealing exclusively with Crimes committed against Domestic Workers like Murder, Rape, Sexual Assault, Sexual harassment etc. Such piece of legislation should be brought into effect on the lines of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which exclusively deal with crimes committed against a particular section of the society. Thus, similarly, Parliament should enact a law about providing crimes committed against the Domestic Workers where the workers are provided time-bound and effective justice.

RECOMMENDATIONS

The distinct nature of work requires separate legislation. A legislative response that adequately wishes to represent the domestic workspace and the domestic care-worker should be sensitive to the 'caring' nature of the work involved, be sensitive to the place of work, i.e., the familial set-up as well as the web of caring relations within which this work is performed. We have suggested re-theorization of the basis of regulating this sphere. A legal framework to be effective must encompass this relational understanding of workers who are employed to be family members. We propose, first, that looking at the domestic workspace through the lens of care ethics can help assess and account for the emotional quotient as part of the job description, necessitating isolation from mainstream labour debates. Second, exploring models of regulation closer to family laws may be better suited to the domestic workspace. This would entail borrowing from models of family regulation to overcome hurdles of approaching caring relations and intervening within the home. The bare minimum would require ascribing value to care work; for regulation to accommodate for caring relationships and for modes of implementation to be sensitive to the domestic workspace. Some suggestions along these lines have been discussed below. On one hand, this necessitates substantive protections to encompass a broader set of possible exploitations. On the other hand, enforcement models need to be wary of privacy considerations and adopt an intervention model suited to the home space. Dispute resolution methods need to allow for non-adversarial processes. Most importantly, given the culture of servitude and widespread exploitation, raising awareness about these rights, working conditions, and terms of employment in care work becomes imperative for any such framework to succeed.

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