

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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FROM SHADOWS TO SPOTLIGHT: NEED FOR LEGAL FRAMEWORK FOR THE PROTECTION OF DOMESTIC WORKERS IN INDIA¹

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ASWATHY V.C & LASNA LATHEEF

One of the reasons that most of the upper and middle class household is capable of functioning smoothly and engage in their professional activities is that households are taken care of by their domestic workers. Eventhough they help to run the residential community in a stress free manner, no society is taking time to address the problems faced by them. *“Domestic workers often belong to marginalised communities, such as Scheduled Castes, Scheduled Tribes, Other Backward Classes, and Economically Weaker Sections. They are compelled to undertake domestic work due to financial hardship or displacement, further reinforcing their vulnerability”*.²A Bench of Supreme Court Justices Surya Kant and Ujjal Bhuyan quoted in the recent petition while dealing with the anguish raised by a impoverished tribal women from Chhattisgarh who suffered as a domestic worker in the national capital and neighbouring cities. There are laws for punishing the acts of these workers but not a single law is enforced to protect their rights .It is the society which includes the policy makers, legislators, NGOs’, and each and every privileged one here responsible for the miserable plight of these marginalised communities. Can the enactment of a legal framework addressing the issues and provide protection and redressal be a solution to such a problem? The paper tries to analyse the challenges faced by the domestic workers, the need for a centralised legal framework for protection of their rights, and put forward suggestions to be included in the legislation.

WHO ARE ‘DOMESTIC WORKERS’?

Domestic workers are those vulnerable part of the workforce who are unorganised by nature. Through the definitions given by various norms and organisations, it is evident that domestic worker is a term which can be interpreted in a very wide manner. Domestic worker is defined

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²Krishnadas Rajagopal, ‘Lack of a protective law exposes domestic workers to abuse, torture: SC’ The Hindu (India, 29 January 2025) 12

as “a person who is employed for remuneration whether in cash or kind , in any household ‘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.”³ Later, a broad definition was given by ILO (2011)⁴, that any person can be called a domestic worker when he engages in an employment relationship on an occupational basis. This definition is capable of encompassing a wide range of domestic helps who are working not on an occasional basis. Viewing through the lens of legislation, it can be identified that the bill⁵ presented in Lok Sabha in 2015 addressed them as “a person employed directly or through an agency to do domestic work for remuneration, for one or more employers, by staying at the house premises or otherwise and includes casual and temporary domestic workers and home nurses”. This definition has tried to include home nurses also under the umbrella term ‘domestic worker’. It also tried to define the workers in a very comprehensive manner including the concept of place they reside.

Dr. Jayanti Ghosh, in the UN Public Lecture on ‘The Invisible Workers: Rights, Justice and Dignity for Domestic Workers’ expressed that, “No society can survive without the massive contribution that domestic work makes to national income.”⁶ A study conducted by the Catholic Bishops Conference of India (CBCI) in 1980 shows that in Kerala and Tamil Nadu 90 per cent of the domestic helps were females; and in Delhi it was 45 per cent.⁷ Later, the Self-Employed Women’s Association in (2014) declared that about 4.75 million people in India can be put under the category of domestic workers.⁸ Hence it is clear that there is an increase from 33.2 million in 1995 to 52.6 million in 2010 in the number of domestic workers. In last few decades there has been a tremendous growth in the demand for domestic workers which has led to their exploitation irrespective of their age and gender especially in metro towns of different states. The ILO estimates that equivalent domestic workers make about 3.6% of all wage employment

³ Domestic workers Welfare and Social Security Act 2010, Bill

⁴International Labour Organization, Domestic Workers Convention C-189, Geneva, 100th ILC session [2011] Article 1:

(b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
(c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

⁵ The Domestic Workers (Welfare and Regulation of Employment) Bill 2015, s 2(a)

⁶ Reghunathan K.R, ‘Domestic Workers in India: Need for A Comprehensive Law’(2019) 10 (2) Research Journal of Humanities and Social Sciences <DOI: 10.5958/2321-5828.2019.00111.6> accessed 20 February 2025

⁷ Ibid

⁸Self-Employed Women’s Association, Domestic Workers’ Laws and Legal Issues in India Issues-India.pdf.

worldwide.⁹ In some nations, this figure exceeds the number of employed individuals.¹⁰ A significant portion of employment, approximately 2% of all employment globally, comes from domestic work. Domestic workers make up about 11.9% of all paid employees in underdeveloped nations like Latin America.¹¹ 83 % of these are female domestic workers.¹² Because of this, domestic work is a significant source of income for women.¹³ Even though this amounts to a major part of the population, they are being excluded from all the crucial labour laws and in a nation upholding constitutional values of equality, the problems of women domestic workers are not even addressed.

CHALLENGES FACED BY DOMESTIC WORKERS

Despite the critical contribution of the domestic workers towards maintaining households and supporting the various families across the globe, they were facing challenges that are frequently ignored by the general population. From inadequate wages and long working hours and lack of legal protections and vulnerability to various forms of abuse, domestic workers are facing a bunch of difficulties on a daily basis. Some of the notable issues faced by them across the country are discussed below.

First and foremost issue is that the domestic workers are excluded from the labour laws. As the domestic workers are excluded from the basic labour laws of many countries, which provide basic protection like the minimum wages, overtime pay etc make them excluded to get the same rights and benefits as other workers. This denies them access or having limited access to the redressal mechanism for unfair treatment.¹⁴

Secondly, the domestic workers are hired informally or the lack of formal agreement or contract in this sector makes the domestic workers difficult to prove their employment status and it also challenges their ability for claiming any rights or benefits that they are entitled to.

⁹ International Labour Organization, *Domestic Workers Across the World: Global and Regional Statistics* (2013) <ISBN: 978-92-2-125273-3>

¹⁰ LF Vosko, 'Decent Work: The Shifting Role of the ILO and the Struggle for Global Social Justice'(2002) 2(1) *Global Social Policy* <DOI: 10.1177/1468018102002001093 >

¹¹ N. Smit, 'Decent Work and the Promotion of Access to Social Protection For Workers in the Informal Economy – An International and Regional Perspective'(2007) 700 *Journal of South African Law*

¹² D. Lucera and N. Roncolato, 'Informal Employment: Two Contested Policy Issues'(2008) 147(4), *International Labour Review*

¹³ International Labour Organization, *Domestic Workers Across the World: Global and Regional Statistics* (2013) <ISBN: 978-92-2-125273-3>

¹⁴ Mann J S, 'Employment Rights Protection and Conditions of Domestic Workers : A Critical Appraisal' (2015) 57 *JILI* pp. 216-243

Thirdly, they were always the victims of suspicions, as the domestic workers are in immediate vicinity to the personal belongings of the household, they easily become the blame bearers for the missing items and other incidents. They often get suspected even without having a substantial evidence against them. Because of this suspicion some of them will experience physical violence, mental torturing and even without a prior notice or without a legal proceedings, they will be fired from their jobs.¹⁵This expulsion can make them financially vulnerable to support themselves or their family members because in certain cases they will be the only bread winner in their family.

Fourthly, the lack of negotiation between the employer and the employee in the unorganised sector affects them drastically. Most of them are paid very low when compared to their long working hours.¹⁶They are depending on their employer not only for the monetary benefits, but also for the non-monetary benefits like the food, accommodation etc especially the live-in workers. So, due to the lack of collective bargaining in this sector affects all the domestic workers.

Another challenge faced by the domestic workers is that a social taboo exists in society where domestic work is often seen as an undervalued labour which typically takes place within a confidential environment which is a household, making them less available to the limelight. This makes a feeling of not to respect the domestic workers even though the work is a vital part of our daily lives. This way of treating the household workers can be traced back from ancient times especially when performed by women or marginalised groups.

Lastly, they are excluded from the benefits enjoyed by others, as the domestic workers are the part of the informal sector, where the work is unregulated and the workers do not have a formal contract, it makes them difficult to get access to the benefits available to other workers in the formal sector. In addition to this, the employer's reluctance to provide additional benefits to the workers due to the additional cost and the administrative burden to the employer is a major concern to this issue.

¹⁵ T Shashikala, 'Issues and Challenges of Women Domestic Workers A Sociological Study' (2023) 11 International Journal of Creative Research Thoughts < <https://ijcrt.org/papers/IJCRT2306943.pdf>>

¹⁶ Mann J S, 'Employment Rights Protection and Conditions of Domestic Workers : A Critical Appraisal (2015) 57 JILI pp. 216-243

Even though these are the analysed challenges faced by the domestic workers, the list can be extended further. By understanding and addressing these issues in an effective manner can bring in appropriate legal and social framework.

NEED FOR SEPARATE LEGISLATION

The unique nature of working environment and the vulnerabilities they face makes the domestic workers in need of a separate legislation. There might be reasons for not regulating the laws for the domestic workers. It can be the complexity in their employment structure like they include part-time, full-time, live-in, live-out etc which makes the authority to develop a law which fit for all. Even so, there are various initiatives made for the formulation of separate legislation but no independent Act exists since. Various States in India have taken initiative to incorporate domestic workers into the domain of protection and to recognise their rights foresay, Kerala, Maharashtra and Tamil Nadu but the result is in vain. On looking into the nature of person who fall under the ambit of domestic workers, it is clear that irrespective of caste or gender, people are forced to be a part of domestic workers. And it is to be noted that, inclusion to be the part of domestic workers is not because of a compulsion from anyone but for their existence in our society. 'Only the fittest will survive'¹⁷ is a well suited quotation to understand the life of those workers. As to make the two ends meet in our society, people of all ages are compelled to do odd jobs. Article 19¹⁸ of the Constitution guarantees certain rights to the citizen. As the Constitution grants these rights, their protection must also be equally ensured. While analysing the conditions of the workers in the organised sector, they have separate laws to address their concerns, various regulating bodies to act for them but the domestic workers have been neglected from protection of their rights as they are not being part of the labour laws. In recent years, numerous reports have been published relating to the issues of domestic workers like the injuries caused by their masters, death of the domestic workers in their workplace etc. While the domestic workers are somewhat covered under existing legislation, their unique needs and rights are not extensively covered or addressed which leaves gaps in their legal protection. Therefore the need to formulate a separate legislation for the domestic workers has exceeded its time. Although there are no enforced laws yet, there have

¹⁷Survival of the fittest, a term made famous in the fifth edition (published in 1869) of *On the Origin of Species* by British naturalist Charles Darwin, which suggested that organisms best adjusted to their environment are the most successful in surviving.

¹⁸Constitution of India, 1950 Article 19. Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right- (g) to practise any profession, or to carry on any occupation, trade or business.

been bills proposed in order to protect the needs and rights of the domestic workers. One such bill is from Kerala.¹⁹ While analysing the bill²⁰, it is identified that irrespective of the gender, it gives a definition for ‘domestic workers’, their rights have been mentioned which includes earning for the livelihood which is free from all forms of bonded or forced labourers, if they work for more than the stipulated time, they are entitled to pay for that extra work done. Domestic workers can approach authorities for resolving their issues or concerns which arises. The bill also mentioned about the benefits provided to the workers, which includes medical assistance, financial assistance for the education of their children etc. The bill has clearly mentioned about formulating redressal council, domestic welfare board and welfare schemes. Based on the analysis of the proposed bill of Kerala, it is clear that it is indeed possible to frame a centralized law for the domestic workers. Many of the domestic workers are employed across state lines or work in regions which are different from their hometown, providing another reason for the importance of centralised law than domestic law. Even with this possibility of framing a centralized law, actual implementation is delayed due to various reasons, which may be because of the absence of strong political support, many social and economic factors and the various stakeholders consent for the implementation of such laws. If the law comes into force then there will be a visible change in the society because when rights are recognised then the corresponding duty will also be performed without any fault.

In short as the Division Bench at Supreme Court on Jan 28 2025 opined, “The simple reason for this harassment and rampant abuse, which seems to be prevalent throughout the country, is the legal vacuum which exists vis-a-vis the rights and protection of domestic workers. As a result, they frequently endure low wages, unsafe environments, and extended hours without effective recourse”. Therefore it is the need of the hour of the shadowed guardians of our home to be protected through law.

WAY FORWARD: SUGGESTIONS TO BE INCORPORATED UNDER LEGISLATIVE FRAMEWORK

This paper analysed that, domestic workers are forced to the wall to survive and therefore it is the responsibility of the law to protect them through a centralised legal framework. Access to the social security systems should be the gateway of the domestic workers. It will help in

¹⁹ Pawan Kumar, ‘It’s Time India Brought Laws To Protect Rights Of Domestic Workers, Provide Them Social Security’ (The Secretariat, 19 January 2024) accessed 20 February 2025

²⁰ The Kerala Domestic Workers (Regulation and Welfare) Bill, 2021

lessening their social and economic vulnerabilities to a large extent.

Taking into account all the definitions analysed, the paper tries to propose a definition for 'domestic worker' which shall include the concept of differentiating full time domestic worker and part-time domestic worker.²¹ And it shall include an exhaustive list of domestic workers in order to avoid further snag, clearly depicting the nature of work, place of residing irrespective of their gender.

While implementing legislation for domestic workers, the state should have a duty to provide legal awareness to those workers informing them about their rights and liabilities. Also, the house owner shall also be given awareness about their legal duties to fulfill while employing a domestic helper. They can take the assistance of District legal service authorities, Panchayat and other NGOs to organise awareness programmes as well as house to house surveys can be also done to spread the awareness to a larger population. During these process, awareness shall be based upon the type of domestic worker (full time, part-time and live in workers).

The actual foundation of the central legislation for the protection of domestic workers should start from the establishment of a welfare board which is capable of acting as the access point for domestic workers in every municipality or corporation. A welfare board should function hand in hand coordinating with the legal service authorities and panchayat/municipal corporation. It should be solely catering to domestic workers. They should encourage the registration of the domestic workers in each area. And after being hired to any house, the Board shall ensure that all the details are furnished by the worker such as the name and address of the employer and of the worker, the address of the usual workplace or workplaces, the starting date and where the contract is for a specified period of time, its duration, the type of work to be performed, the remuneration, method of calculation and periodicity of payments, the normal hours of work, paid annual leave, and daily and weekly rest periods, the provision of food and accommodation, if applicable, the period of probation or trial period, if applicable and terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer if required.²² The exemplification of functioning of

²¹Director General Labour Welfare, Ministry of Labour and Employment, Final Report of the TaskForce on Domestic Workers (2011) <http://wiego.org/sites/wiego.org/files/resources/files/dw_task-force_report.pdf>

²² ILO, Domestic Workers Convention (2011) Art 7

the Board can be taken from States of Kerala²³, Tamil Nadu²⁴ and Maharashtra.²⁵

Agencies can be also set up under the Welfare Board for recruitment purposes and for referrals to employers. At the same time, it should be taken care of to provide protection to those who get hired for work via their personal connections, community networks and alike if they approach the Board for registration.

The legislation should be capable of providing redressal mechanisms to the domestic workers in case of disputes between the employer and employee, employee and employee in case if more than one employee is hired and if any instances of physical or mental abuse occurs. As a speedy redressal is required in such cases, Alternative Dispute Resolutions can be opted, out of which conciliation will be a better option (similar to labour disputes). At the same time, the Board must also be responsible for helping domestic workers in getting connected with the Legal Services Authorities in order to help them approach the courts in cases of severe abuse if conciliation seems ineffective or insufficient. Appointment of a lawyer through free legal aid scheme will be also necessary. For that the inclusion of 'domestic workers' under Section 12 of Legal Service Authority Act, 1987²⁶ will be effective.

House-premises inspection can be also conducted by the 'inspectors' established under the Act to ensure the working conditions of the domestic worker as well to enquire on whether the working requirements are being met by the worker on a monthly basis provided that this activity does not interfere with the private life or privacy of the family.²⁷

It is to also be taken into account that, implementation of these steps should not cause disproportionate harm to the family who employed the domestic worker or the residential area where he/she works, for eg. unrestricted bargaining power, initiating a strike etc...

²³The Kerala Domestic Workers(Regulation and Welfare) Bill 2021, s (13)- Constitution of Domestic Workers Welfare Board

²⁴ Tamil Nadu Domestic Workers Social Security and Welfare Scheme 2007

²⁵ The Maharashtra Domestic Workers Welfare Board Act, 2008

²⁶The Legal Services Authorities Act 1987, s 12(f) states an industrial workman,, but in this particular section domestic workers should be incorporated.

²⁷International Labour Organisation No. 189. Art. 17 ,

France has tackled these privacy concerns by allowing the householder the discretion to let the Labour Inspector enter his home. Spain, on the other hand, takes away the discretion from the householder and places the same into the hands of the judiciary, provided the Labour Inspector is able to discharge the burden that such inspection is intended to enable monitoring related to potential proceedings before social courts. South Africa also allows for an alternate process of distributing requests in the householders' mailboxes for granting access to their households.

Also, India can adopt mechanisms from other Asean countries such as Thailand²⁸, Malaysia²⁹, Hong Kong³⁰ that have enacted laws to protect the rights of domestic workers. Most of these countries have migrant domestic workers from countries such as Nepal, Sri Lanka, Pakistan, Indonesia and the Philippines. In these countries, things like weekly off, rest days, pensions, minimum wages, sick leave and social security are provided to workers. For example, in Hong Kong, minimum wage, rest days, paid annual leave and holidays are ensured through laws. In Thailand, the provision of minimum wage, break time and leave have to be followed as per the law. Singapore has also ensured minimum wage, accommodation, insurance, medical and rest days for domestic workers. It also mandates pension fund contributions from employers.³¹

CONCLUSION

The paper has identified that there is a strong need for a comprehensive centralised legal framework to protect the domestic workers. The existing labour laws are designed with the formal sectors in mind and completely undervalues the unorganised sector and thereby neglects them. This vacuum in the laws creates the widespread exploitation of the domestic workers. The multitude of the challenges faced by the domestic workers cannot be compiled in a single list. Creation of a separate centralised legal framework for the domestic workers can address their issues and concerns. Also it will create a value for them and serve as an acknowledging stamp. The paper also tries to propose certain legal mechanisms to be included under the legislation for its smooth enforcement. As the way we unlock the doors to our homes, let us unbar the gates to justice and protection for the domestic workers who tirelessly serve us.

²⁸ Ministerial Regulation (No.14) B.E. 2555 [2012] issued under the Labour Protection Act.

²⁹ The Employment Act 1955 and the Employees' Social Security Act 1969

³⁰ FDHs are admitted into Hong Kong for full-time, live-in employment with a specific employer under a Standard Employment Contract

³¹ Pawan Kumar, 'It's Time India Brought Laws To Protect Rights Of Domestic Workers, Provide Them Social Security' (The Secretariat, 19 January 2024) accessed 20 February 2025