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PROTECTING THE RIGHTS OF DOMESTIC WORKERS: CHALLENGES, LEGAL FRAMEWORKS, AND THE PATH FORWARD

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ABSTRACT

Domestic workers play an important part in the labour market and economy of any country. This article aims to investigate the issues faced by domestic workers in India. The objectives of the study are to find out the coping mechanisms used by domestic workers in India and to create solutions that can make domestic work a recognizable profession in India. This paper aims to analyse the rights of domestic workers, highlight the challenges they face, and evaluate the legal protection and their working conditions.

Keywords: Women, Domestic Workers, Exploitation, Legal Vaccum.

INTRODUCTION

Domestic workers are the sector of workers who provide household services such as cleaning, cooking, washing and ironing clothes, gardening, taking care of elderly or children or sick members of the family and even taking care of household pets. Domestic workers may work full-time or part-time, they might be employed in a country where they do not hold citizenship rights, and are called as migrant domestic workers. Domestic work is the most important source of employment for women as compared to men, out of them many women belong to vulnerable socio-economic backgrounds, which renders them a suspect of violation of rights.

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Domestic workers are drawn from disadvantaged groups and underprivileged sections of society. The majority of the population is low-income, illiterate, unskilled, and unfamiliar with urban job markets. Their work is devalued, underpaid, and inadequately controlled. Issues such as job conditions, fixed work time, aggression, abuse, sexual harassment, victimization by traffickers/placement agencies, forced migration, lack of welfare, and limited skill development opportunities lead to stagnation.

Usually observed, the number of domestic workers employed in urban areas are women, ill-treated by their employers and deprived of the right to decency of work including which they are subjected to long working hours, sexually exploited, and also face discrimination in payment of wages. Domestic workers are also excluded from Indian labour laws which monitor employment issues such as working conditions, wages, provident funds, social security, maternity leaves and old age pensions.

RESEARCH OBJECTIVES

1. **To identify the challenges:** highlight important problems of domestic workers' rights, such as exploitation, discrimination, and a lack of legal protection.
2. **Analyze existing national and international legal frameworks:** to analyze the legal frameworks that aim at protecting the rights of domestic workers.
3. **To evaluate the current regulations and enforcement mechanisms**: evaluate mechanisms for providing fair salaries, safe working conditions, and social security for domestic workers.
4. **To investigate the role of stakeholders**: Investigate the role of governments, NGOs, employers, and domestic workers in lobbying for improved legal safeguards.
5. **To make recommendations for enhancing legal measures**: make recommendations on legal and policy measures to protect the rights of domestic workers.

TYPES OF DOMESTIC WORKERS

1. Domestic workers may work on a full-time basis or for a few hours (part-time basis).
2. They can live in the home of their employer (live-in workers) or their residence (live-out workers).
3. Migrant worker- may be working in a country where he/she does not hold citizenship rights.

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4. Higher Contribution by Females: out of the 75.6 million domestic workers worldwide, 76.2% are women as compared to men.

CHALLENGES FACED BY DOMESTIC WORKERS

1. **Lack of legal recognition**

   Many countries do not consider domestic work as a formal kind of employment, excluding them from labour laws, and social protections including holidays, minimum wages, hours of work and insurance.

2. **Exploitation**
   - Low minimum wages- Many workers are paid below the minimum wages
   - Long working hours- Many workers work without any rest and intervals and overtime.
   - Physical violence- Sexual exploitation, humiliation and harassment are observed most commonly.

3. **Lack of Job security and contracts**

   Before employment, domestic workers do not enter into any kind of formal contract with the employer which makes it easy for the employer to terminate without any benefits. Hence, the domestic workers face difficulty in job security.

4. **Ignorance of labour rights:** The legislation concerning workers such as the Industrial Disputes Act 1947, Employees Provident Fund Act 1952 and Factories Act 1948, do not recognize the work carried out by domestic workers in private households referred as "work".
5. **Implementation Question:** In accordance with the Minimum Wage Act of 1948, domestic work was added to the list of planned employment, consistent with the 2011 ILO Convention. However, only 13 states/UTs have adopted laws requiring minimum wages for housing employees hence the implementation remains poor.
6. **No freedom of movement:** Domestic workers face restriction of movement, isolation and confiscation of their identity documents so as to restrict them leave the place of work.
7. **Challenges relating to migration and gender:** The majority of domestic workers are women, and many of them are migrants who confront extra challenges such as language hurdles, cultural discrimination, and legal limits on migration.

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PROTECTION OF DOMESTIC WORKERS- IN INDIA

In recent years various steps have been taken by the Government of India for providing legal safeguards to domestic workers. The 'Unorganised Workers' Social Security Act (2008) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act (2013) include provisions for these issues. Other approaches such as Rashtriya Swasthya Bima Yojana (RSBY) also include domestic workers, their protection and social security.

Despite various laws that provide for prohibition of work of children below the age of eighteen, employment of children is still observed a common practice in India. Juvenile Justice Act, Child Labour Act[2] have been effective to some extent. However, children above the age of fourteen are allowed to work under some exceptional circumstances as prescribed under Child Labour Act but are not subjected to Juvenile Justice Act[3].

VACCUM IN EXISTING LABOUR LEGISLATION

An analysis to the definitions under labour laws shows that domestic workers are not included under the scope of labour laws because of the limitations of certain definitions such as the "workman", the "employer" or the "establishment". Domestic workers are not covered by the current rules due to the peculiarity of the employee-employer relationship and the fact that the workplace is a private residence rather than a public space or business. Due to these definitional limitations, even placement agencies are exempt from labour regulations. To include domestic workers in labour laws legislations such as Maternity Benefit Act, 1961; Workman's Compensation Act,1923; Inter-State Migrant Workers Act,1979, Payment of Wages Act,1936; Equal Remuneration Act, 1976; Employee's State Insurance Act, 1948; Employees Provident Fund Act, 1952; and the Payment of Gratuity Act, 1972 need amendments.

Reports of National Human Rights Commission (NHRC) and International Labour Organisation finds that 90 percent of trafficking in India is internal. Due to lack of unemployment and non-availability of jobs in rural areas leads to the continuous supply of women and domestic workers to different cities. Domestic workers especially women and children have been the victims of forced labour, sexual exploitation, confinement and trafficking.

[2]Child Labour (Prohibition and Regulation) Act, 1986.
[3] Juvenile Justice Act, 2000.

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Indian constitution mentions trafficking and forced labour related issues under Fundamental Rights in Part III and Directive Principles of State Policy in Part IV.

- **Article 23**[4] of Fundamental Rights prohibits trafficking and all forms of forced labour and exploitative practices. This article requires the state to take action against forced labour and abolish similar forms of such practices.
- **Article 24**[5] prohibits the employment of children under fourteen years in factories, mines or other such kind of hazardous work.

Provisions under Directive Principles of State Policy:

- **Article 39**[6]**:** ensures that the health and strength of individuals are not abused and that no one is compelled by economic constraints to perform the work that is unfavourable to their age or strength.
- **Article 39**[7]**:** states that children and youth should be protected against exploitation.

Section 370 of Indian Penal Code 1870 (currently Section 143 of the Bharatiya Nyaya Sanhita, 2023) penalizes the act of knowing or reasonably believing that a minor has been trafficked and exploiting the juvenile for sexual gain. The sentence is rigorous imprisonment for at least five years, which may extend up to seven years, plus a fine. It further stipulates that if an adult is trafficked and exploited for sexual purposes, the punishment is rigorous imprisonment for at least three years, which may extend up to five years, and fine.

Indian legislation now includes a concept of trafficking based on the Palermo Protocol in the CLA (2013). The term "forced labour" was not highlighted in this regulation. Instead, the CLA mentions the phrase "practices similar to slavery." The judicial interpretation of "practices similar to slavery" may include labour exploitation through trafficking. If not, the new amendment would still leave workers exposed to exploitation. Existing trafficking legislation does not address this issue. The Immoral Traffic Prevention Act, 1956 (ITPA) only addresses sex trafficking and the Indian Penal Code, 1860, provides penalties for acts not particularly addressed in the ITPA. Although India joined the UN Convention on Transnational Organised Crime,2000, and its Protocol on Trafficking in Persons in May

[4] India Const. art. 23, cl. (1).
[5] India Const. art. 24, cl. (1).
[6] India Const. art. 39, cl. (e).
[7] India Const. art. 39, cl. (f).

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2011, yet there is no central law governing the vulnerable work conditions of domestic workers.

THE NEED FOR COMPREHENSIVE LEGISLATION

The only reason forexploitation of domestic workers is Legal Vaccum. The domestic workers stand excluded from the provisions of the Payment of Wages Act 1936, Equal Remuneration Act 1976, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Juvenile Justice (Care and Protection of Children) Act, 2015, etc.

Although Code on Wages, 2019 introduces provisions to address the issue of minimum wages for domestic workers. Moreover, statutes such as the Social Security Code of 2020 bring domestic workers within the ambit of 'unorganised workers'. States such as Tamil Nadu and Maharashtra have enacted laws to create welfare boards for domestic workers. The Kerala Government also took the initiative and introduced the Kerala Domestic Workers (Regulation and Welfare) Bill, 2021for protection of Domestic workers from exploitation. However, there is the need for pan-Indian law, with specific protections covering domestic workers in India. These bills have never materialized into tangible laws and policies.

As there is no central legislation for domestic workers in India, references are made to the international spectrum, ILO has issued several guidelines, treaties and conventions for the betterment of labour laws across the world. It has made provisions that recognizes disadvantaged and marginal class groups. The ILO Committee of Experts has stated that initiatives promoting job equality should include domestic workers, excluding them would violate the Conventions. ILO adopted the Domestic Workers Convention, 2011 that contains the provisions for protection of domestic workers laying down their basic rights and the measures that States must take to ensure decent work conditions and social security benefits to the workers.

Similarly, the landmark Convention on Elimination of All Forms of Discrimination Against Women, 1979 also addresses female migrant workers and those undertaking domestic work.

Looking to the legal standing of domestic workers within India, there is a lacuna in legislative framework, for protecting the rights of domestic workers and safeguarding their interest.

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Several attempts have been made to bring domestic workers under legal protection. However, for various reasons beyond the scope of this article, these Bills have not been implemented into laws or policies. In this regard, we can simply mention the following:

1. **Domestic Workers' Employment Conditions 1959 Bill**[8]: This bill was an early attempt to control working conditions for domestic servants. It sought to establish minimum salary, work hours, and employment conditions for domestic workers. However, the Bill got little support and was not passed into law.
2. **The House Workers (Conditions of Service) Bill of 1989**[9]**:** Addressed similar difficulties by formalizing employment practices and providing safeguards to domestic workers. Despite being introduced, this Bill did not receive substantial attention or progress towards enactment in Parliament.
3. **The Housemaids and Domestic Workers (Conditions of Service and Welfare) Bill, 2004:** This was introduced as a private member's Bill in the Rajya Sabha. The Bill proposes mandatory registration for domestic workers and requires the government to guarantee adequate provisions. This includes employment possibilities, medical benefits, and other welfare measures. It also imposed fines for employers who hire unregistered personnel. However, the Bill did not get through Parliament.
4. **The Domestic Workers (Registration, Social Security and Welfare) Bill, 2008:** The National Commission for Women introduced a registration process for domestic workers and provided them with social security benefits. The bill was to the drafting stage but not enacted into law.
5. **The Domestic Workers (Decent Working Conditions) Bill of 2015**[10]**:** The goal was to integrate domestic workers in existing labour regulations, such as the Industrial Disputes Act of 1947. The Bill aims to ensure fair salaries and regulated working conditions for domestic workers. However, did not get enacted by the parliament.
6. **The Domestic Workers Welfare Bill 2016:** The proposal of this bill includes migrant and minor domestic workers. The Bill outlined working conditions, terms of employment, and collection of a cess by the employer to support the social security

[8]Domestic Workers' Employment Conditions Bill,1959, Bill No.1399 of 1959.
[9]The House Workers (Conditions of Service) Bill,1989, (December 22, 1989).
[10]The Domestic Workers (Decent Working Conditions) Bill, 2015, Bill no. 74 of 2025.

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fund. Additionally, businesses and placement agencies were required to register their employees. This bill, however, was not passed.

7. **The Domestic Workers (Regulation of Work and Social Security) Bill, 2017[11]:** The goal of this bill was to regulate domestic workers, assign duties to employers and placement agencies, create registration boards, and solve related issues, to address migration-related marginalisation, significant labour regulations should include domestic workers. However, the bill was never passed.

Recent years have seen good efforts to improve the legal and social position of domestic workers in India. These developments although still in early phases of implementation, these initiatives highlight the need to address the systemic neglect experienced by this workforce**.** The Code on salaries, 2019, includes regulations addressing minimum salaries for domestic workers. The Social Security Code of 2020 replaces previous legislation, particularly the "Unorganised Workers" Social Security Act of 2008, that now covers provisions for domestic workers.

This inclusion qualifies individuals for benefits such as social security, health insurance, provident fund, and maternity leave. Further the introduction of the e-Shram portal, launched in 2021, has created a centralised database for identifying and registering migrant, domestic, and unorganised workers, allowing them to access social services.

Despite the absence of central legislation for domestic workers, several states have taken initiatives for protection of interest and welfare of domestic workers. Government of Tamil Nadu established the Tamil Nadu Domestic Workers Welfare Board in 2007 under the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982 that administers various benefits, security, health, education, marriage assistance etc.

Government of Maharashtra has also enacted the Maharashtra Domestic Workers Welfare Board Act, 2008, creating District Domestic Labour Welfare Boards with tripartite representation from employers, employees, and the government. This Act allows domestic workers to voluntarily register to access social security benefits, including maternity and child care, education assistance, and medical expense reimbursement.

Similarly, Kerala introduced the Kerala Domestic Workers (Regulation and Welfare) Bill, 2021 to protect, regulate, and improve the welfare of domestic workers. The Bill aims to

[11]The Domestic Workers (Regulation of Work and Social Security) Bill, 2017, Bill No. XI of 2017.

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ensure minimum wages, fair treatment, and lawful payment for workers, who are employed through third-party agencies.

CONCLUSION

Domestic workers are integral part of the society and belong to the most vulnerable group of society. Despite tremendous efforts in recognizing their rights, numerous challenges remain the same. Strengthening legal frameworks, enforcing existing laws, and empowering workers via education and unionization are all important measures towards securing justice and dignity for domestic workers. A global commitment is required to enhance their working conditions and assure fair and compassionate treatment of all domestic workers globally.

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