
**FROM INVISIBLE LABOUR TO RECOGNISED WORK: EXAMINING
THE LEGAL STATUS OF DOMESTIC WORKERS IN INDIA**

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ABSTRACT

In India, it is common perception that doing domestic work is below dignity. Although performance of household chores also require skill but they fall under unorganised sector. Domestic workers do not have any protection under the current labour legislations as domestic workers belong to unorganised sector. The domestic work is performed in “private households” which is not covered by professional definition of industry to which labour laws could apply. Similarly, a special statute has been enacted to target entire unorganised sector workers known as “the Unorganised Workers Social Security Act, 2008”. This Act has included domestic workers under the unorganised sector. But this Act has not defined domestic workers specifically. This, Act provides benefit to workers by some schemes mentioned in Schedule-I. One such scheme is the *Rashtriya Swasth Bima Yojana* (RSBY). Several attempts have been made so far to enact a comprehensive law for domestic workers but all attempts have failed. It started from the earliest attempt in the form of the Domestic Worker (Conditions of Service) Bill, 1959. The latest attempt in this this direction was the Domestic Workers (Regulation of Work and Social Security) Bill, 2017. Also, recently, the government has formulated four Labour Codes i.e., the Code on Wages, 2019, the Code on Industrial Relations, 2020, the Code on Social Security, 2020, the Occupational Safety, Health and Working Conditions Code 2020. These codes aim at securing protection to workers including unorganised workers. Further, the All-India Survey on Domestic Workers is being conducted by the Labour Bureau, Chandigarh under the directions of the Ministry of Labour and Employment. Only after the enactment of special legislation for domestic workers will get proper safeguard and recognition of rights.

KEYWORDS: *Domestic Workers, Unorganised Sector, Protection, Legislations, Bill, Labour Codes.*

1. INTRODUCTION

The existence of domestic service is not new in India. There are many evidences and references regarding this. Domestic work has strong roots in slave system not only in ancient period but also in medieval period and has continued till date. It was the chief occupation of slaves. Domestic slavery was prevalent all over India till the enactment of the Indian Slavery Act, 1843 which abolished slavery. Domestic service was integral part of colonial rule in India and the feudal system. Due to existence of caste system in India landlord received services from different castes regarding domestic chores. In modern times the demand for domestic work is different from traditional demand for domestic help. With urbanization and industrialization there is lifestyle change of middle class which has increased demand for domestic workers¹.

There has been significant change in labour sector since last two decades. India has a considerable informal sector including self-employed workers. There are around forty-three crore workers in the informal labour sector. Earlier informal workers were totally devoid of social security coverage. But now some benefits have been conferred by the pension programmes, *Rashtriya Swasthya Bima Yojana, Jan Dhan Yojana*. But these benefits are very basic and inadequate. There are still many challenges in way of improving conditions of domestic workers. It is not yet clear that whether benefit given by various schemes actually reaches workers of male and female workers of informal sector².

Traditionally, in Indian society's domestic work have always been associated with women. It was a common perception that domestic work was most suitable for women. But with the growth of urbanization more and more women are taking up jobs. This has led to increase in demand of domestic workers. Domestic workers can be covered under the informal sector because of same socio-economic, educational and cultural conditions. Thus, there is ample scope for their mental, physical abuse. In most cases, it has been seen that they face human rights violation. Their socio-economic conditions have direct link with poverty. They succumb to vicious circle of poverty and spend life in economic bondage³.

¹ Dr. M. Madhumathi, "Migration for Domestic Work- A Case of Female Domestic Workers in Bangalore" 2(1) *International Journal of Social Science & Interdisciplinary Research* 48 (2013).

² Mirai Chatterjee, "Organizing for Social Security: From Grassroots Action to Legislation, Policies and Effective Implementation" 12 *Journal of National Human Rights Commission* 263 (2014).

³ Vinita singh, "Female Domestic Workers: A Case for Violated Human Rights" in S.N Chaudhary (ed.), *Human Rights and Poverty in India: (Volume-III)* 118-119 (Concept Publishing Company, 2005).

Earlier paid labour was done mostly by males. But irony is that women's domestic labour was never recognized as a force behind men's social production. Women's labour has always been undermined and unpaid⁴.

India is one of largest democracy in the world. India has always worked upon Gandhian principle that each citizen has dignity and worth. There are Fundamental Rights and Directive Principles of the State Policy to secure rights of citizens. Then also, it has been claimed by domestic workers that these rights are just in theory. And they get very little recognition of these rights in reality like other citizens. So, long neglected concerns of domestic workers have to be assessed⁵.

One another factor behind growth of domestic workers is adverse agricultural conditions. Because of draught like conditions agriculture is deteriorating. This is forcing people to migrate to cities. It is mostly the males who migrate and females stay back and usually work as domestic workers, vendors of vegetables, fruits or own petty shops⁶.

2. AIMS AND OBJECTIVES OF THE STUDY

The main objectives of the proposed study are given as under:

- To trace the history behind domestic work as employment which lead to legislations.
- To study socio-economic conditions of domestic workers which compel them to take up occupation.
- To study Indian law and find out various loopholes in existing statutory provisions.
- To study role of national and international organisations in framing of legislations and their role in raising awareness about the issues.
- To give suggestions which makes domestic workers laws more effective for them.

3. HYPOTHESIS

The main purpose of present study is to find out whether the legislations provide comprehensive answer to each and every situation that may arise while implementing the constitutional goals of equality and social order. Keeping in view, the nature of research

⁴ Suneetha Eluri and Alok Singh, *Unionizing Domestic Workers: Case Study of the INTUC-Karnataka Domestic Workers Congress 7* (International Labour Office, Geneva, 2013).

⁵ Abdul Majid, *Legal Protection to Unorganised Labour* 14 (Deep and Deep Publications Pvt. Ltd., New Delhi, 2000).

⁶ V. Stephen and Lucy Xavier, "Micro Insurance- Promoting Social Security Among Poor Women: An Intervention by People's Solidarity Association (PSA)" in Selwyn Stanley (ed.), *Social Problems: Perspectives for Intervention* 428 (Allied Publishers Pvt. Limited, 2004).

problem and on the basis of foregoing discussion the following hypothesis related to present study has been formulated:-

- The existing framework of labour laws in our country does not touch the issue of domestic workers.
- The role of International Labour Organization (ILO) has been effective for sensitizing, creating awareness about the problem.
- The general masses are ignorant about their rights and privileges.

4. REVIEW OF LITERATURE

The proposed study is aimed at critical evaluation of laws relating to domestic workers in India. For this purpose, deep review of the existing literature on the subject is very necessary. Some of the important books relating to the subject are mentioned here:-

Domestic Woman-Workers in India by **Seepana Prakasam** is a book which studies live-in and live-out workers in details. In this book writer has made a case study of Chandigarh and provides data on various basis like religion, age, educational status, marital status, caste etc⁷.

Women Workers in Unorganized Sector: Calcutta Experience by **Nirmala Banerjee** highlights conditions of women domestic workers. It highlights role of informal sector in Calcutta's economy and poor condition of unorganized sector in comparison to organized sector⁸.

Women Domestic Workers: Socioeconomic Life by **A.N Singh** makes investigation into socio-economic conditions of domestic workers. It studies reasons behind taking up domestic work as employment and also makes suggestions for improving their conditions at employment and employer employee relation⁹.

Doing the Dirty Work? The Global Politics of Domestic Labour by **Bridget Anderson** is a result of Bridget Anderson's continuing campaigns for rights of domestic workers. It tells us about few boons and many banes about this employment. It tells us about racial and gender biasness in domestic work, its roots in slavery, legislative loopholes. It describes domestic work as essentially a feminist activity¹⁰.

⁷ Shipra Publications, New Delhi, 2012.

⁸ Sangam Books Ltd., New Delhi, 1985.

⁹ Shipra Publications, Delhi, 2001.

¹⁰ Zed Books Ltd., London and New York, 2000.

Women Domestics: Workers Within Households by Vinita Singh makes study of the domestic workers employed by middle class families. The case study of Ranchi city has been made. The issues of domestic workers are properly highlighted and analyzed¹¹.

5. DEFINITION OF DOMESTIC WORKER

The term “domestic” signifies and includes in it various types of “menial workers”. It can include cook, sweeper, ayah, kitchen helper, house cleaner, utensil cleaner, clothes washer etc. Any work related to household can be included in it and basically domestic worker works in private homes¹². The definition of domestic workers is as follows:

5.1 THE DOMESTIC WORKERS CONVENTION, 2011

Article 1 of this convention defines both domestic work and domestic worker. According to this Article, domestic work is defined as work done in a household. The domestic worker is a person who does domestic work under an employment relationship. It also defines who is not a domestic worker. According to this Article if a person does work occasionally not as an occupation is not a domestic worker¹³.

The domestic workers are also defined in various Bills which have been enacted from time to time. Some of them are:

5.2 THE DOMESTIC WORKERS (REGULATION OF WORK AND SOCIAL SECURITY) BILL, 2017

Section 2 (f) of this Bill defines domestic work and section 2 (g) defines domestic worker. Thus, under this Article domestic work is defined as the work done in household or households. Whereas domestic worker as a person doing domestic work under an employment relationship¹⁴.

6. HOW TO COUNT DOMESTIC WORKERS?

There are four types of approaches which are used to identify domestic workers on the basis of existing statistical classification. These are status-in-employment approach, household-roster approach, and industry-based approach. These approaches are explained as below¹⁵:

¹¹ Rawat Publications, Jaipur, 2007

¹² Amit Kundu, “Conditions of Work and Rights of Female Domestic Workers in Kolkata” 50:4 *International Journal of Labour Economics* 854 (2007).

¹³ Lisa-Marie Hein Eshoff & Helen Schwenken, “Domestic Work: A significant Sector” in Helen Schwenken, Lisa-Marie Heimeshoff (eds.), *Domestic Workers Count: Global Data on an Often-Invisible Sector* 5 (Kassel University Press GmbH, 2011).

¹⁴ The Domestic Workers (Regulation of Work and Social Security) Bill, 2017, s. 2(f), (g).

¹⁵ International Labour Organization (ILO), “Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection” 9-10 (January, 2013).

6.1 TASK-BASED APPROACH

The International Standard Classification of Occupations (ISCO-88 and ISCO-08) is sometimes used to identify domestic workers on the basis of their occupation. ISCO-88 provides for “Housekeepers and Related Workers” in code 5121, “Homebased Personal Care Workers in code 5133, “Domestic Helpers and Cleaners” in code- 9131 and “Child Care Workers” in code 5131.

6.2 STATUS-IN-EMPLOYMENT APPROACH

Use of this approach is quite common in Latin American countries. These countries have adopted the International Classification by Status in Employment (ICSE-93). This classification distinguishes between other the category of employees and domestic workers. For example: an institute in Brazil Brasileiro de Geografia e Estatística identifies domestic workers as those persons who give domestic services in one or more houses for payment which is in cash or kind.

6.3 HOUSEHOLD-ROSTER APPROACH

In some countries, domestic workers are identified through Labour Force Survey (LFS) questionnaires. These questionnaires examine relationship between each member of household with head of family. This approach is helpful in case of live-in domestic workers where domestic workers are living in the household of employer. The flaw of this approach is that it does not take into account live-out domestic workers.

6.4 INDUSTRY-BASED APPROACH

This approach is called the International Standard Industrial Classification of all Economic Activities (ISIC). In its division 95, activities of private households as employers of domestic staff are placed. This approach gathers common features of domestic work. It gives a clear vision about domestic worker. It fulfils the gaps left by the task-based approach and the household-roster approach.

7. TYPES OF DOMESTIC WORKERS

A domestic worker may be a live-in worker, full-time and part-time domestic workers. A domestic worker may not be national of the country in which he works or may be an interstate migrant¹⁶. Thus, live-out and live-in are two broad types of domestic workers. They are as follows:

¹⁶ Bharti Birla, “Ageing Population: Need for Formal Care Workers” in S. Irudaya Rajan and Gayathri Balagopal (eds.), *Elderly Care in India: Societal and State Responses* 73 (Springer, 2017).

7.1 LIVE-OUT DOMESTIC WORKERS

The live-out domestic workers work either in one house or multiple houses but in the end of the day they go back to their houses. If they have taken up work in single household they work there for whole day and in evening go to their house. If they are working in multiple households, they perform specific chores in different houses which covers their whole day. But in evening they go back to their houses. For doing these chores they may be required to visit a house twice a day. The wages are fixed in according to piece rate of work. Most of these workers are from the migrant families.¹⁷.

7.2 LIVE-IN DOMESTIC WORKERS

The live-in workers are usually the full-time workers. They live with employer's family. They may be required to work at any hour of the day. Sometimes they are exploited for longer hours which may be up to eighteen hours a day. They are referred to as family members but they are treated likewise. They often do not have proper space to sleep, no proper bathroom, no living space, no privacy. They are often given makeshift bed which they pack early in morning. They face many difficulties like lack of proper food, sleep, wages, and emotional, physical and sexual abuse. They don't have any support mechanism in case they face difficulty. Many girls are often recruited by private placement agencies. These girls are brought from remote areas. Some of them are given training before placing them as domestic workers¹⁸.

8. HISTORICAL BACKGROUND OF DOMESTIC WORKERS

The domestic work has roots in ancient system of slavery. Rigveda's mentions about '*dasas*' which means slaves. In large families, the mistress of house usually kept retinue of servants who helped her in maintaining household. The houses of nobles had numerous servants. '*Bana*' who was great master of Sanskrit prose in ancient India has depicted noble ladies going to the palace of *Prabhakaravardhana* with their retinue of servants carrying toiletries, gifts and garlands. The fleet of palace servants included doorkeepers, stable keepers, gatekeepers, cooks, camera-bearers, attendants, waterman, betel box bearer, and waterman, watch women, nurses for children, garden keeper and other servants to attend royal persons¹⁹. In *Harshacharita* also, there an instance is mentioned in which queen *Yasovati* is washing her face and is assisted by a hunch-backed girl who is pouring water and wiping cloth is held by a

¹⁷ JAGORI, "Domestic Workers: Conditions, Rights and Responsibilities (a Study of Part-Time Domestic Workers in Delhi)" 4 (December, 2010).

¹⁸ *Id.* at 5.

¹⁹ Sukla Das, *Socio- Economic Life of Northern India* 344 (Abhinav Publications, New Delhi, 1980).

mute girl. Thus, physically disabled and crippled mostly served as domestic servants and earned their livelihood. There were special quarters in palace for servants. *Narada*, *Brihaspati*, *Katyayana*, *Manu* and *Kautilya* have clearly declared that master should pay wages to servants. Kautilya has clearly laid down that failure to pay wages should be punished with a fine ten times the amount of wages. Gifts were also given to servants occasionally. There is reference that *Prabhakaravardhana* bestowed flowers and garments on workmen during the wedding of Rajyashri. Princess Kadambari bestowed valuable ornaments on her female garden keeper when she received news of flowering of creepers which she herself looked after²⁰.

During the Mughal period the imperial household was run on a large scale. During the reign of Akbar, there were more than hundred workshops and offices in a palace. Chief Officer of palace was called *bakshi* who was palace commander also. Other servants of palace were tent-master, wardrobe keeper, master of elephants, secretary. Akbar organized all departments of household on military lines. These departments were water supply, kitchen, gardens, stables, fruiterers and so on. The kitchen was headed by Mir Bakawal. He also controlled all assistants, stores, cooks, tasters and treasurer etc. Emperor Jahangir owned around 12000 horses and 12000 elephants. There were four servants to look after each elephant. For the elephant which emperor used there were seven servants²¹. The *Mughal* kings also had numerous wives and concubines in harem. There were thousands of ladies in *harem* who served king, his wives, concubines and daughters. These women in *harem* have separate quarters and separate servants ranging from ten to twelve. Even wives of nobles had many servants²².

The royal household department was also operated by slaves. The posts held by them to manage royal household were *abdar*, *chitardar*, *jamadar*, royal canopy holder, *paharedar*, *sharabdar*, *shamadar* and *pil ban* who was keeper of elephants²³. The imperial household was under the control of *Khan-i-Sama*. He controlled all other servants of the emperor. The daily expenditure made for emperor, stores, food etc. was supervised by him. He enjoyed emperor's trust²⁴. The noble class of *Mughals* also enjoyed extravagant lifestyle. The

²⁰ *Id.* at 345-346.

²¹ S.M. Edwards and H.L.O. Garrett, *Mughal Rule in India* 241-242 (Atlantic Publishers and Distributors, New Delhi, 1995).

²² Abraham Eraly, *The Mughal Word: Life in India's Last Golden Age* 127-129 (Penguin Books, new Delhi, 2007).

²³ Jamini Mohan Banerjee, *History of Firoz Tughlaq* 136 (Munshi Ram Manohar Lal, Delhi 1967).

²⁴ Ramesh K. Arora and Rajni Goyal, *Indian Public Administration: Institution and Issues* 24 (Wishwa Prakshan, New Delhi, 2005).

household of nobles also consisted of many wives, slaves, concubines and domestic servants. The non- village economy of *Mughal* empire consisted of merchants, native princes, *jagirdars*, *mansabdars*, domestic helpers, *Mughal* emperor, court, artisans²⁵.

During British period in India, the British officers could afford large number of servants and very little household duties were left for them. It was observed by *Maud driver*, an English author that British ladies had practically no household duties. The commander-in-chief of Britain's Indian army General Henry Fane had eighty-six servants for him and his daughter Isabella who was nine years old²⁶.

In India, Britons kept a large number of servants and slaves. These servants were Indians. Indian servants were less costly and easily available. It was expensive to bring in British servants and their death rate was high. The British who came to India adopted lavish lifestyle like the upper-class Indian households. They kept numerous servants like these upper-class Indian households. Even the middle-class British officers had variety of servants like herald's, translators, body servants, gardeners, horse grooms, night soil removers, palanquin carriers, cooks, table attendants, guards, clerks, hookah tenders, lady's maids, body servants, nurses, translators, messengers²⁷.

The public appearance of the Bengal Council was never without fleet of servants. Whenever, they appeared in street minimum twenty servants followed them. Even non- official class kept too many servants. It was considered a status symbol. The renowned advocate of Supreme Court William Hickey kept many servants numbering minimum sixty-three²⁸.

9. CURRENT COVERAGE IN LABOUR LAW AND LABOUR WELFARE

Many studies have been conducted to determine the application of various labour laws to domestic workers. Thorough study of labour laws shows that the definition of employer, workmen and establishment in these labour laws is constricted. Due to these, domestic workers are not covered by these laws. Because of various situational factors it becomes more exigent to shield domestic workers under these laws. These factors are nature of work, area of work i.e., private household. The definitions of various labour laws will have to be

²⁵ Vijay K. Seth, *The Story of Indian Manufacturing: Encounters with Mughal and British Empires (1498-1947)* 43 (Palgrave Macmillan, Singapore, 2018).

²⁶ Jeffrey A. Auerbach, *Imperial Boredom: Monotony and the British Empire* 147 (Oxford University Press, United Kingdom, 2018).

²⁷ Michael H. Fisher, *Counterflows to Colonialism: Indian Travelers and Settlers in Britain 1600-1857* 54 (Permanent Black, Delhi, 2004).

²⁸ Suresh Chandra Ghosh, *The Social Condition of the British Community in Bengal 1757- 1800* 110 (BRILL, Leiden, 1970)

amended to include domestic workers. These laws are the Maternity Benefit Act 1961, the Minimum Wages Act 1948, the Inter-State Migrant Workers Act 1976, the Workmen's Compensation Act 1926, the Provident Fund Act, the Payment of Wages Act 1936, the Equal Remuneration Act 1976, the Payment of Gratuity Act, 1972, the Employee's State Insurance Act. It is essential to give legislative protection to domestic workers to raise their status to that of real worker. Their area of work, conditions of work, definitional loopholes have to be worked out. Attention should be paid to include domestic workers under these laws²⁹.

Now, the first ever All India Survey on Domestic Workers is being conducted by the Labour Bureau, Chandigarh. The Union Minister for Labour and Employment, Sri Bhupender Yadav released instruction manual with questionnaire for this survey. This survey will cover all states, union territories and 742 districts across country³⁰. Further, the government have framed Indian Labour Code which aims to consolidate the labour laws of the code. These codes are the Code on Wages, 2019, the Industrial Relations Code, 2020, the Occupational Safety, Health and Working Conditions Code, 2020, the Code on Social Security, 2020. Several states have implemented labour codes i.e., Uttar Pradesh, Madhya Pradesh, Haryana, Punjab, Gujrat. Other states are also in the process of implementation of these codes. Several states have implemented labour codes i.e., Uttar Pradesh, Madhya Pradesh, Haryana, Punjab, Gujrat. Other states are also in the process of implementation of these codes.

9.1 THE DOMESTIC WORKERS (REGULATION OF WORK AND SOCIAL SECURITY) BILL, 2017

This Bill was introduced by Sankar Prasad Datta in *Lok Sabha* and it was introduced in *Rajya Sabha* by Mr. Oscar Fernandes. The purpose of this Bill is to provide for regulation of domestic workers, to provide them social security, setting up of state boards and district boards, compulsory registration of domestic workers. The main features of this Bill are as follows³¹:

(i) This Bill provides for the registration of domestic workers, employers and service providers, compulsory registration of employer, registration of part-time domestic worker, migrant worker, effect of non- registration, effect of renewal and non-renewal of registration of certificate.

²⁹ Ministry of Labour and Employment, Government of India, "Final Report of the Task Force on Domestic Workers: Realising Decent Work" 25 (September, 2011).

³⁰ The labour Bureau, Ministry of Labour and Employment, Press Release, *available at*: <https://pib.gov.in/PressReleaseframePage.aspx?PRID=1773934> (last visited on 2 March, 2023 at 8:20 P.M).

³¹ The Domestic Workers (Regulation of Work and Social Security) Bill, 2017, ss. 3, 4, 5, 6, 9, 10, 11, 12, 16, 18, 19, 36, 37, 38, 39, 46, 52, 53.

(ii) This Bill provides for the implementing authorities under the Act i.e., the central advisory committee, the state social security boards, the district boards for registration domestic workers and the social security board.

(iii) This Bill also provides for the establishment of the domestic workers social security fund, contribution of domestic workers and employers, effect of non- payment of contribution.

(iv) This Bill also provides for the regulation of working conditions, duties of employer and employment, leave, enrolment under the employees state insurance scheme, minimum wages etc. This Bill also provides for grievance redressal and dispute resolution.

(v) This Bill also provides for the offences and penalties, complaint mechanism, emergency aid and legal aid.

9.2 THE DOMESTIC WORKERS CONVENTION (NO. 189) AND RECOMMENDATION (NO. 201)

The International Labour Organization (ILO), adopted the Domestic Workers Convention, 2011 (No. 189) on 16 June 2011 at the International Labour Conference. This convention is specifically designed to protect domestic workers. Under this convention, the states are required to take steps to achieve decent work for domestic workers. It provides basic rights and principles to be followed by member states. The date of enactment of this convention i.e., 16th June is celebrated as the International Domestic Workers Day. To bring public awareness a campaign named as “your work is important” is brought up by the International Labour Organisation (ILO).

Another instrument which was adopted at the International Labour Conference of 2011 was the Domestic Workers Recommendation (No. 201). It is supplementary to the Domestic Workers Convention, 2011 (No. 189). This recommendation is not open for inspection like the convention. The purpose of this recommendation is to give practical guidance about implementation of principles of the convention.

9.2.1 KEY FEATURES OF THE DOMESTIC WORKERS CONVENTION, 2011 (NO. 189)

(i) The convention defines domestic work as work which is performed in or for a household or households and domestic worker means any person who is engaged in doing domestic work for an employment relationship³².

³² The Domestic Workers Convention, 2011 (No. 189), arts. 1(a), 1(b).

- (ii) Under this convention, any person who does domestic work only occasionally is not a domestic worker. It also covers domestic work done not on occupational basis³³.
- (iii) The provisions of convention are applicable to all domestic workers. But it also provides for limited exclusion of certain categories of workers by members. It provides that members may after consulting representatives of organizations of employers and workers exclude certain categories of workers.³⁴
- (iv) This convention clearly provides that provisions of this convention shall be implemented by each member after consultation with representative organizations of employers and workers. The provisions shall be implemented by extending or adapting mode of laws, regulations, agreements and additional measures³⁵.
- (v) This convention secures basic human rights for domestic workers. Under this convention, members are obliged to promote, respect and realise rights at work as well as fundamental rights.³⁶ They also have to provide minimum wages to the domestic workers without discrimination on the basis of sex³⁷.
- (vi) This convention imposes obligation upon the members to protect domestic workers against harassment, violence and abuse³⁸.
- (vii) This convention imposes obligation upon members to take steps to eliminate child domestic labour. Each member has to fix minimum age for domestic workers according to the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). Such minimum age which is fixed should not be lower than the age limit fixed by national laws and regulations³⁹.
- (viii) Under this convention, each member has to ensure that domestic workers enjoy fair terms of employment, decent working and living conditions if they are staying at employer's house⁴⁰.
- (ix) The members are also obliged to take measures regarding information on the terms and conditions of employment. If possible, this can also be done in form of written contracts which are framed according to national laws⁴¹.

³³ *Id.*, art. 1(c).

³⁴ *Ibid.*

³⁵ *Id.*, art. 18.

³⁶ *Id.*, art. 3.

³⁷ *Id.*, art. 11.

³⁸ *Id.*, art. 5.

³⁹ *Id.*, art. 4.

⁴⁰ *Id.*, art. 6.

⁴¹ *Id.*, art. 7.

- (x) This convention imposes obligation upon members to regulate work hours, period of rest, overtime compensation, annual leave according to national laws and regulations⁴².
- (xi) Under this convention members are obliged to provide minimum wages to domestic workers without discrimination⁴³.
- (xii) The payment shall be made to domestic workers in cash at least once a month⁴⁴. The limited proportion of remuneration may also be paid in kind if provided by national laws, collective agreements, regulations and arbitration⁴⁵.
- (xiii) It is also the duty of members to protect domestic workers including migrant domestic workers against abusive practices of private employment agencies⁴⁶.
- (xiv) It is the duty of each member to ensure occupational safety and health of domestic workers. The measures should be taken according to the national regulations and laws⁴⁷.
- (xv) Under this convention, maternity protection should be given to domestic workers according to the national regulations and laws⁴⁸.
- (xvi) This convention Protects for Particular Groups of Domestic Workers like firstly, Child Domestic Workers⁴⁹, secondly, Live-in Domestic Workers i.e., if they are living within employer's household then they are entitled to right to privacy⁵⁰ and they have their travel and identity documents in their possession⁵¹, thirdly, migrant Domestic Workers⁵², fourthly, Private Employment Agencies⁵³:
- (xvii) This convention imposes obligation upon each member to ensure that domestic workers have access to dispute resolution mechanisms including access to courts and tribunals⁵⁴.
- (xviii) They should also establish effective complaint mechanism. They should also make sure that national laws and regulations are complied with⁵⁵.

⁴² *Id.*, art. 10.

⁴³ *Id.*, art. 11.

⁴⁴ *Id.*, art. 12(1).

⁴⁵ *Id.*, art. 12(2).

⁴⁶ *Id.*, art. 15 (1)(e).

⁴⁷ *Id.*, art. 13.

⁴⁸ *Id.*, art. 14.

⁴⁹ *Id.*, art. 4(2).

⁵⁰ *Id.*, art. 6.

⁵¹ *Id.*, art. 9.

⁵² *Id.*, art. 8.

⁵³ *Id.*, art. 15.

⁵⁴ *Id.*, art. 16.

⁵⁵ *Id.*, art. 17.

9.2.2 RECOMMENDATION NO. 201 – HOW IS IT RELATED TO THE CONVENTION?

The Domestic Workers Recommendation No. 201 is supplementary to Convention No. 189 adopted by the International Labour Conference of 2011. The recommendation is not open for inspection like the Convention No. 189. The recommendation serves as a guidance in implementing the provisions of this convention. The main features of the recommendation are as follows:-

- (i) To eliminate any legislative or administrative restrictions or to establish or to join the worker's organizations⁵⁶.
- (ii) To eliminate discrimination regarding employment and occupation, work-related medical testing respecting personal data and the privacy, no HIV or pregnancy test⁵⁷.
- (iii) To identify the types of domestic works which are likely to harm the moral, health and safety of children.⁵⁸
- (iv) To frame model contract of employment for domestic work made in consultation with representative organizations available free of charge to domestic workers⁵⁹.
- (v) To protect domestic workers from abuse, harassment and violence and provide accessible complaint mechanisms, investigation and prosecution, programmes for the relocation⁶⁰.
- (vi) To fix hours of work including overtime and stand-by periods, night work, daily or weekly rest, compensatory rest, paid annual leave⁶¹.
- (vii) It also provides for limited portion of remuneration by payment in kind, written account of the total remuneration in understandable language, protection of interests of workers in case of employer's insolvency or death, food and accommodation. In case of termination of employment there should be reasonable period of notice and time, payment of social security contributions⁶².
- (viii) To provide a national hotline for domestic workers, pre-placement visits to households, emergency housing, and repatriation at expiry or termination of contract of employment, cooperation of members with each other to effectively apply provisions of the Domestic Workers Convention, 2011⁶³.

⁵⁶ *Id.*, para 2.

⁵⁷ *Id.*, para 2.

⁵⁸ *Id.*, para 5.

⁵⁹ *Id.*, para 6.

⁶⁰ *Id.*, para 7.

⁶¹ *Id.*, para 8, 9, 11, 12, 13.

⁶² *Id.*, para 14, 15, 16, 17, 18, 20.

⁶³ *Id.*, para 21, 22, 26.

10. FEMINISATION OF DOMESTIC WORKERS

Over the years there has been increase in number of women domestic workers. However, many questions arise regarding this phenomenon. It is to be questioned that whether such participation of women is voluntary or if it is situational compulsion? It has also to be assessed if it is creative engagement with work or livelihood option or burdensome inhuman work relation? It has also to be assessed if it is double burden or women's emancipation. Thus, the condition of domestic workers demands immediate attention⁶⁴.

Situation of girls is more challenging due to cultural norms in society. Girls are discriminated in many ways and placed at inferior position. When they enter labour market they are often paid less for menial tasks. There is absence of legislation and failure to implement the legislations which exists. According to a report of the United Nations (UN), "Give Girls a Chance" it is mentioned that physical and verbal abuse is common at workplace. It is also confirmed by the report that violence faced by underage workers often go unreported⁶⁵.

It is estimated that there are around 16 million people in forced labour. Larger share of victims of forced labour is of females i.e., 57 percent. Males constitute 43 percent and children's 20 percent of share of forced labour. Among the various types of work done under the category of forced labour, largest share is of domestic workers⁶⁶.

In the last three decades, the share of women in workforce has increased. Maximum participation of workforce is in the unorganized sector. Maximum number of women in such workforce is in the unorganized sector. According to the International Labour Organization (ILO), domestic worker is a person who works in houses of other people for wages. While India's Commission of Justice Development and Peace defines domestic workers as a person who is employed on a temporary, permanent, part-time or full-time basis to do household work⁶⁷.

11. FINDINGS

11.1 HYPOTHESIS I: The existing framework of labour laws in our country does not touch the issue of domestic workers.

⁶⁴ Suneetha Eluri and Alok Singh, *Unionizing Domestic Workers: Case Study of the INTUC-n Karnataka Domestic Workers Congress 7* (International Labour Office, Geneva, 2013).

⁶⁵ International Labour Organization (ILO), "Give Girls a Chance-Tackling Child Labour, a Key to the Future" 3-4 (June, 2009).

⁶⁶ International Labour Organization (ILO) and Walk Free Foundation, "Global Estimates of Modern Slavery: Forced Labour and Forced Marriage" 32 (September, 2017).

⁶⁷ Amit Kundu, "Conditions of Work and Rights of Female Domestic Workers in Kolkata" 50:4 *International Journal of Labour Economics* 853 (2007).

FINDING: After accomplishment of this work, the researcher is of opinion that the hypothesis holds partially well and is jurisprudential.

The domestic workers do not have any protection under the current labour legislations. Majority of labour legislations are related to workers of organised sector and domestic workers belong to unorganised sector. The basic reason is that the definitions of “workmen”, “industry”, “employer”, “establishment” is restricted. The domestic work is performed in “private households” which is not covered by professional definition of industry to which labour laws could apply.

Similarly, a special statute has been enacted to target entire unorganised sector workers known as “the Unorganised Workers Social Security Act, 2008”. This Act has included domestic workers under the unorganised sector. But this Act has not defined domestic workers specifically. This makes the implementation of the Act to domestic workers difficult. The domestic workers under this Act can be covered under the definition of “home-based worker”, “self-employed worker”, “unorganised worker” and “wage worker”. This Act sets up a national social security board and the state social security boards in states. But these boards mainly have monitoring and advisory roles in implementation of schemes. Thus, Act provides benefit to workers by some schemes mentioned in Schedule-I. Since these schemes come under different ministries, it is difficult to implement. To get benefit under the schemes given under the Act, workers have to get themselves registered with the district administration and in some cases pay a contribution. Up till now, this Act has failed to make specific benefit to domestic workers. In case *Shramjeevi Mahila Samiti v. State of NCT of Delhi*, AIR 2018 SC 439 decided on 4 August 2017, Supreme Court gave directions to the Ministry of Labour to make registrations of domestic workers in collaboration with local legal services authority. Several attempts have been made by states to provide security to domestic workers. The state of Tamil Nadu has enacted the Tamil Nadu domestic workers welfare board in 2007 under the Tamil Nadu Manual Wages Act, 1982. Similarly, the district domestic labour welfare board has been established by the state government under the Maharashtra Domestic Workers Welfare Board Act, 2008.

The *Rashtriya Swasth Bima Yojana* (RSBY) was enacted. In 2010, it was recommended by the task force on domestic workers set up by the Ministry of Labour and Employment that domestic workers should be covered by this scheme in 2011. The Union Cabinet approved the application of *Rashtriya Swasth Bima Yojana* (RSBY) to domestic worker. It is expected to cover 47.50 lakh domestic workers in India. It provides health insurance cover up to 30,000 rupees. The funds will be released from the national social security fund for

unorganised workers. This scheme requires registration which has been left to the state government. Only households listed in the below poverty line (BPL) list maintained by census can take benefit of this scheme. This scheme has failed badly due to poor enrolment ratios, lack of government funds, frauds.

To provide benefits to domestic workers some of the existing legislations need to be expanded to cover domestic workers. These are the Minimum Wages Act, 1948, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013, the Employees State Insurance Act, 1948, the Trade Union Act, 1926, the Industrial Disputes Act, 1947, the Shop and Establishment Act, 1953 the Contract Labour (Regulation and Abolition) Act, 1970, the Interstate Migrant Workmen's (Regulation of Employment and Conditions of Service) Act, 1978, the Employees State Insurance Act, 1948, the Maternity Benefit Act, 1961, the Payment of Wages Act, 1936, the Equal Remuneration Act, 1976, the Employees Provident Fund Act, 1952, the Workmen's Compensation Act 1923, the Weekly Holidays Act, 1942, the Personal Injuries (Compensation Insurance) Act, 1963, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the Payment of Gratuity Act, 1972.

In India, the condition of the workers of unorganised sector has been long ignored by the government. Several attempts have been made so far to enact a comprehensive law for domestic workers but all attempts have failed. It started from the earliest attempt in the form of the Domestic Worker (Conditions of Service) Bill, 1959. After this, the Bills which were attempted to be introduced were the Domestic Workers (Conditions Of Service) Bill, 1972 and the Domestic Workers (Conditions of Service) Bill, 1977, the Domestic Workers (Conditions of Service) Bill, 1989 and the Domestic Workers (Conditions of Service) Bill, 1990, the Household Workers Conditions of Service Bill, 1990, the Housemaids and Domestic Servants (Conditions of Service And Welfare) Bill, 2004, the Domestic Workers (Registration, Social Security and Welfare) Act, 2008, the Domestic Workers (Regulation of Employment, Conditions of Work, Social Security And Welfare) Bill, 2008, the Domestic Workers Welfare and Social Security Act, 2010, the Domestic Workers (Welfare And Regulation of Employment) Bill, 2015, the Domestic Workers Welfare Bill, 2016. The latest attempt in this this direction was the Domestic Workers (Regulation of Work and Social Security) Bill, 2017. Also, recently, the government has formulated four Labour Codes i.e., the Code on Wages, 2019, the Code on Industrial Relations, 2020, the Code on Social Security, 2020, the Occupational Safety, Health and Working Conditions Code 2020. These codes aim at securing protection to workers including unorganised workers. Further, the All-

India Survey on Domestic Workers is being conducted by the Labour Bureau, Chandigarh under the directions of the Ministry of Labour and Employment.

11.2 HYPOTHESIS II: The role of International Labour Organization (ILO) has been effective for sensitizing, creating awareness about the problem.

FINDINGS: After accomplishment of this work, the researcher is of opinion that hypothesis is partly true.

The International Labour Organization (ILO) is the tripartite United Nations specialised agency. It seeks to achieve social justice, rights at work for the employers, workers and governments for its 187 member states. To achieve these objectives for workers it sets up labour standards. The International Labour Organisation (ILO) sets up international standards in the form of conventions and recommendations. The ratification of a convention creates legally binding obligation upon the ratifying country. However, in case of recommendations they are non-binding. But they act as guidelines in framing of national policies. The International Labour Organisation (ILO) has played a significant role in evolution and framing of different labour legislations regarding labourers in different countries. In India also, there has been considerable influence as a reference for drafting labour laws. India has always adopted a positive mindset regarding international conventions. Although India is a signatory to the convention C-189 but has not ratified it. In total, India has ratified 47 ILO conventions and 1 protocol. Out of these 39, conventions are in force. There are eight core conventions of the International Labour Organisation (ILO) which are also known as the Human Rights Conventions or the Fundamental Principles and Rights at Work. From among the core conventions India has adopted the conventions on Forced Labour (No. 29), Equal Remuneration Convention (No. 100), Discrimination (Employment Occupation) Convention (No. 111) and Abolition of Forced labour Convention (No. 105). Besides these conventions, there are other conventions related to labour that are ratified by India and whose provisions can be applicable to domestic workers if suitable. The convention C-189 is also known as the Domestic Workers Convention, 2011. It was adopted on 16th June, 2011. It is aimed at protecting 53 million domestic workers worldwide. Although India is a signatory to the convention, but has not ratified it. Besides this specific convention, there are other conventions too whose provisions are applicable to domestic workers in general. They are total forty-three in number. These conventions can be grouped as the conventions related to freedom of association, conventions related to forced labour, conventions related to equal treatment and opportunity, conventions related to fee charging employment agencies and

employment service, conventions related to human resource development, convention related to employment security, conventions related to labour administration and inspection, convention related to industrial relations, conventions related to minimum wage, conventions related to general work conditions, conventions related to occupational safety, convention related to housing, conventions related to social security, conventions related to employment of women, conventions related to old workers, conventions related to migrant workers.

Besides all these conventions and the domestic workers convention C-189, there are some specific conventions which are applicable to child domestic workers and some conventions that can be extended to child domestic workers. The Article 4 of the domestic workers convention, C-189 and Para 5 of its Recommendation specifically applies to the child domestic workers. The other conventions are the Minimum Age Convention, 1973 (No. 138) and its Recommendation (No. 146), Worst Forms of Child Labour Convention, 1999 (No. 182) and its Recommendation No. 190, Night Work of Children and Young Persons (Agriculture) Recommendation, 1921 (No. 14), Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79), Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78), Medical Examination of Young Persons Recommendation, 1946 (No. 79). The other conventions which can be extended to child domestic workers are the Covenant on Economic, Social and Cultural Rights, Convention on Civil and Political Rights, Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 1979, Convention Against Torture in 1984, SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia in 2002, Optional

Protocol to CRC on Sale of Children, Child Prostitution, Child Pornography signed in 2004, Convention on the Rights of the Child (1989)

11.3 HYPOTHESIS III: The general masses are ignorant about their rights and privileges.

FINDINGS: The researcher is of opinion that hypothesis is partly true.

The domestic workers are generally ignorant about their rights and privileges. This is generally because of lack of legislations which give them specific rights. For example: The wages for other category of workers are specified by the government and the labourers are also aware about this. This gives them bargaining power and they get at least the wages fixed by government. But in case of lack of fixation of wages by government and absence of law, domestic workers have poor bargaining power. So, they end up accepting the terms of employer. While the data collection study, it was found that most of the domestic workers are uneducated or just have primary education and in seldom cases secondary education. So, they

are shy, ignorant and have fear of loss of employment in case they try to negotiate. They are also ignorant about the existing legal situation. Under the Minimum Wages Act, 1948, both the central and state governments have powers to fix or revise minimum wages. The central government has fixed minimum wages for forty-five occupations. But this does not include domestic workers. But the domestic workers fall under the domain of states. So, states have notified the minimum wages for domestic workers among which Karnataka was the first to do so. Other states are Dadra and Nagar Haveli, Kerala, Odisha, Assam and Meghalaya, Jharkhand, Bihar, Rajasthan, Tamil Nadu, Punjab and Tripura. The government of West Bengal is also planning to bring a minimum wage structure for domestic workers. In the state of Himachal Pradesh minimum wages for domestic workers were first notified in 2017. But, while collecting the data it was found that all of the domestic workers were ignorant about this notification. None of them knew about the minimum wage rate prevailing. Also, the labour laws are codified into four Labour Codes. The State of Himachal Pradesh has republished draft rules on all four Codes.

12. SUGGESTIONS

Some of the steps which can be taken to improve the condition of domestic workers are as follows:

- (i) The domestic workers welfare boards should be set up in every district on the similar lines of states of Tamil Nadu, Maharashtra and Kerala.
- (ii) There is urgent need for comprehensive legislation regarding domestic workers. The Parliament should enact a legislation covering issues of domestic workers.
- (iii) To give benefit to domestic workers under any legislation, schemes or policies which comes up, domestic work needs to be legally recognised as a category of professional occupation just like any occupation in formal sector.
- (iv) The collective bargaining through trade unions and organisations needs to be streamlined. In some states, there are no unions for domestic workers.
- (v) There is need to fix ambiguities in the definitions of domestic workers and domestic work. This will help in proper assessment of this sector but will also government to frame policies and programmes.
- (vi) Only few states have enacted the minimum wages by including domestic work in the list of their scheduled employments. This should be made compulsory for the states to include domestic work as scheduled employment so that they get minimum wages.

- (vii) Since, most of the domestic workers comes from poor families the states should identify families below poverty lines. Special protection should be given to children of these families.
- (viii) The government should make regulation of placement agencies compulsory in every state. Besides this, strict monitoring of migrations, illegal trafficking is necessary as all these are interlinked.
- (ix) India should ratify the convention no. 189 on domestic workers. This would impose obligation upon Indian government to enact legislation for domestic workers according to the international labour standards.
- (x) The government and various agencies should organise skill training programmes for them. This would help them train in domestic jobs like taking care of the old and persons with social needs, child care, cooking etc.
- (xi) Since most of the domestic workers migrate from backward areas. There is need for to create income resources and opportunities in those areas. If people have income sources in their areas they will not migrate. There will be less chances of being duped by shoddy placement agencies.
- (xii) The existing empirical data need to be streamlined. Currently, the data given by different agencies are available and there is huge gap in those data.

13. CONCLUSION

Thus, it can be said that existence of domestic servants and domestic service as profession is not new. It has existed since ancient times in different forms and by different names. Domestic work can be found to emerge from some forms of social evils practiced in Indian society like caste system, *jajmani* system, bonded labour, slavery etc. Different terms have been used for domestic servants throughout history like *ahitika* who were bonded labourers, *dasa* i.e slaves, *dandapatrakarini* i.e servant who worked to pay off fine, *ganika* i.e servant who looked after king's comfort etc.

The term 'domestic servant' cannot be confined to certain kind of household work. But it includes servants hired to perform any kind of household work like cooking, cleaning, taking care of the old and the young, ironing clothes etc. In villages, it may include servants taking care of cattle, working in fields and kitchen gardening etc. So, it can be observed that since ancient times domestic work cannot be confined to particular sphere. In *Mughal* period also, there were number of servants working for the nobility, kings and queens. These people performed variety of daily tasks like carrying water, fanning, torch beavering, sweeping, driving away mosquito's etc. Slaves were also employed in agriculture.

Similarly, when Britishers came to India, it was expensive for them to bring British servants. They kept fleet of Indian servants which formed cheap labour. The types of domestic servants employed by Britishers were Butler, Matey, Dressing boy, *Ayah*, Cook, Market Boy, Waterman, Sweeper, Gardeners, Punkhaman, Coachmen Housekeepers, Grass Cutters, *Dhobi*, etc. Thus, it can be concluded that domestic servants performed variety of work and could not be confined to specific area. Even now domestic work has not been acknowledged as specific profession. There is no law relating to domestic workers. The existing labour laws are related to workers of organised sector. They are a deprived section and devoid of rights. If government brings them under specific legislation, many people would be benefitted just like any other worker under other labour legislations.

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