

Chapter 9

Rights Of Domestic Workers In India: A Substantive Analysis Of The Indian Legal Framework

Author: Awasthi Vinod Co Author: Nandini Praveen ¹¹³

Introduction

The term “Domestic Worker” is defined as a person who is employed for remuneration whether in cash or kind, in any household through any agency or directly, either on a temporary basis or permanent, part time or full time to do the household work or allied work, and it shall include activities such as cooking ,washing clothes or utensils, cleaning or dusting of the house, and caring/nursing of the children/sick/old/handicapped.¹¹⁴ Doing household work is to this day seen as below someone’s dignity. Cooking, cleaning, caring for children are all skilled jobs but they fall under the unorganized sector, with no law to protect their rights, no health cover and no pension. Beyond just being a paid worker, the work that these women do is one of the reasons that the modern Indian woman can go out of her home to work without having to worry about the burden of household chores. Institutionalizing this sector shall improve the working conditions and wages of domestic workers, leading to their economic development and contribution towards sustainable development of the country.

According to UNESCO, migration is the crossing of the boundary of a political or administrative unit for a certain minimum period of time.¹¹⁵ Indian emigration to the Gulf countries for work has a long historical background. According to the latest estimates by the Ministry of Overseas Indian Affairs (MOIA) of the Government of India, approximately 6 million Indian migrants are living and working in six Gulf countries, thus

¹¹³ Author: Awasthi Vinod

University: His Highness Maharaja’s Government Law College, Ernakulam

Email: aswathyv206@gmail.com

Co-Author: Nandini Praveen

University: His Highness Maharaja’s Government Law College, Ernakulam

Email: nandini.praveen2000@gmail.com

¹¹⁴ Section 2(f) of the Domestic workers (Registration, social security and welfare) Act 2008.

¹¹⁵ UNESCO, Social and Human Sciences, International Migration, Migrant/Migration (Aug 19, 2019, 10:06 am), <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/migrant/>.

becoming an important destination for Indian migration.¹¹⁶ Private placement agencies are some of the prime recruiters for individuals to move overseas. However, viewing this to be an opportunity to make easy money, these agencies are engaging in exploitative practices by colluding with the employer. Moreover, the often-precarious legal status of migrant workers in the destination country, and lack of knowledge of the local language and laws, puts their social security at risk. Women migrants who are employed as domestic workers face ill treatment in Gulf countries, sometimes even being subjected to sexual abuse. The exclusion of domestic workers from key protections in national labor laws, immigration policies that give employers inordinate control over workers, and the isolation of domestic workers in private homes, are the main factors that increase their vulnerability to exploitation. Trafficking of these workers is one such example.¹¹⁷ India is a source and transit route for trafficking of women and girls going to the Middle East for domestic work.

The Palermo Protocol¹¹⁸ defines trafficking in persons as:

“... the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

In order to prevent such hardships faced by the workers, the government must have a better regulatory framework governing this sector.

Issues Faced By Domestic Workers

Data released by the Ministry of Women and Child Development in February 2014, published in response to a question tabled in the upper house of Parliament, track reports of violence against domestic helpers between 2010 and 2012.¹¹⁹ Overall, in India's 28 states and 7 union territories, there were 3,564 cases of alleged violence against domestic workers reported in 2012, up slightly from 3,517 in 2011 and 3,422 in 2010.¹²⁰ According

¹¹⁶Sudhaveni Naresh, *Indian Migration to Gulf Countries: Issues and Challenges, Volume 6 Issue 6 [Year - 2015] ISSN 2319 – 9202*.

¹¹⁷Pg 14, *Indispensable yet unprotected: Working conditions of Indian Domestic Workers at Home and Abroad / International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) - Geneva: ILO, 2015*.

¹¹⁸ *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000, supplementing the United Nations (UN) Convention on Transnational Organized Crime*.

¹¹⁹UN India, *Rights of Domestic Workers*, (Aug 12, 2019, 12:22 am), <https://in.one.un.org/page/rights-for-domestic-workers/>.

¹²⁰ *ibid*

to data provided by Delhi Labor Organization, there are over five crore domestic workers in India, most of whom are women.¹²¹ From not being given food during long working hours to being subject to all kinds of abuse, the situation remains terrible. Sexual, verbal and physical abuse against domestic workers have become very common. The maid is seen as an easy and defenseless target. They are objectified, are subject to offensive jokes and lewd comments and worst of all, such behavior is seen as casual and socially acceptable.

Legal Provisions

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 includes domestic workers in its ambit. The Act mandates the constitution of an Internal Committee (IC) at the institutional level and a Local Committee at the local level.¹²² The constitution of LC and its effective functioning is of particular relevance for the informal sector. According to ILO, there are currently 9 crore women in the unorganized sector in India and the provisions of the SHW Act extend to all these women. Both live-in and live-out domestic workers are protected under the SHW Act 2013 and have the right to seek redressal from the LC when they are sexually harassed at their workplaces. But this can only happen when the domestic workers and other informal sector women workers would become aware about the act. The Act mandates the LC to conduct regular awareness and sensitization sessions for the workers and employers to make them aware about the issue and provisions of the act. It also mandates the LC to appoint one nodal officer at the block/tehsil/taluka level to forward complaints to the committee. These nodal officers are to act as first points of contact, who will receive information about such instances of violence in the unorganized sector workplaces, report them and sensitize and generate awareness in their communities. It has been found that LCs are unaware of their roles and responsibilities in preventing sexual harassment at workplace in the informal sector. LCs haven't been conducting regular awareness or sensitization programmes, due to which women workers are unaware about their rights and employers continue to behave with impunity. This is further aggravated because in most states, functioning LCs are lacking. According to an RTI query filed by Martha Farrell Foundation in 2017, out of 655 districts in the country, only 191 districts have setup an LC; out of these only 18% have conducted orientation of members or awareness programmes, 97% did not respond about SC/ST membership, 11 districts have no NGO representative and 20 districts and 103

¹²¹ *The New Indian Express, The Sunday Standard, "Congress to soft launch outreach effort for domestic workers", (Published: 09th December 2018 09:32 AM), www.newindianexpress.com/thesundaystandard/2018/dec/09/cong--to-soft-launch-outreach-effort-for-domestic-workers-1909114.html.*

¹²² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

replied to say that they are yet to establish an LC.¹²³ With absence of LCs in many parts of the country and LC members unaware about their roles and responsibilities, it is needless to say that domestic workers continue to lack governance support to prevent sexual harassment at workplace.¹²⁴ The number of working hours in the proposed Domestic Workers (Regulation Of Work and Social Security) Bill is 48 hours a week and a maximum of 9 hours a day. The challenge here is going to be have a mechanism whereby the employer abides by this and more importantly, the employee should be aware of such a thing. Most of the domestic workers are illiterate or can barely read and write and are unaware of their rights as workers. When there is lack of awareness, they will be forced to work the way their employer wants them to, and in case they retort, they are simply replaced by another maid. Bringing the domestic workers community together and making them more aware of their legal rights is extremely crucial. The maids are met with outright denial if they ask for a raise. The lack of respect and recognition in the society for their work is the main reason that they are ill-treated.

Issues Faced by Migrant Domestic Workers

The majority of women who migrate for work has a very minimal understanding of their working conditions that were communicated to them orally. While many of them got the payment, they were promised and were allowed to leave after two years as agreed, some of them had deductions made from their salaries of which they were not informed earlier. This was the money that finally went to pay their agents, relatives and others who had got them their visas. So, despite a significant number saying that they paid nothing to go abroad, in most cases the deductions in their salaries were made deceptively by relatives or agents at a later date. They felt they had no choice but to accept whatever payment and working conditions they received since they were in a foreign country and needed the protection of their employer or agents.¹²⁵

Most of the migrant domestic workers are not even asked for their work contract before leaving the country, which indicates that none of them had actually received the required emigration clearance as the legal age for emigration for unskilled female domestic workers is 30 years. They require an emigration clearance to travel at which time they are also

¹²³ Martha Farrell Foundation, Sexual Harassment of Domestic Workers at their Workplaces, An Ongoing Study on Part-time Domestic Workers in Gurgaon, Faridabad and South Delhi, Context Setting and Release of Initial Findings.

¹²⁴ibid

¹²⁵ Pg 18, *Indispensable yet unprotected: Working conditions of Indian Domestic Workers at Home and Abroad / International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)* - Geneva: ILO, 2015.

required to produce a work contract from the employer that gives the details of the employer and the wages to be paid.

Upon arrival in their destination countries, some of the women could not even keep their passports. Others were told by their agents that they had to work for at least two years for their employer, even if they were exploited and abused. There were instances where exploitative employers registered false criminal cases against the domestic worker in retaliation for the worker wanting to leave prior to the expiration of the work contract. Many of the women who migrated say that they did not know that only recruiting agents that under The Emigration Act 1983¹²⁶ are permitted to recruit workers for overseas employment. None of these workers were aware of the various schemes and welfare funds of the government for workers in distress.

Legal Provisions

The Emigration Act 1983 aims to safeguard the interests of migrant contract workers and ensure their welfare. Under the Act, only recruiting agents registered with the Ministry of Labor and Employment can recruit for overseas employment after obtaining a registration certificate from the PGE. While the GOI has realized that the institutional framework created by the Emigration Act is not as effective as it should be and that it lacks coherent legal, administrative and policy structures necessary to implement it, there is little or no acknowledgement that the existing framework discriminates against ‘low-skilled’ emigrants from the country in general and ‘low-skilled’ women migrants in particular. The Act divides citizens into two categories according to their educational qualifications: low-skilled migrants whose passports are marked Emigration Clearance Required (ECR) and others who do not require such clearance (ECNR – Emigration Clearance not required). Ostensibly, this is done in order to protect less educated migrants. However, it does not offer sufficient protection to ‘low-skilled’ emigrants from the country, particularly women. In fact, it prohibits the movement of specific categories of women. In order to assist emigration processes in Kerala where the number of emigrants is large, Nora-Roots (Non-Resident Keralite Affairs Department) of the Government of Kerala was created in 2002. It has three offices in the State, in Kochi, Kozhikode and Thiruvananthapuram, and two outside it, in Mumbai and New Delhi and it has an integrated programmed for overseas job seekers. It conducts pre-migration and pre-departure orientation programmers twice a year in each district, developing awareness among aspirants about the general job situation abroad and imparting essential information relating to passports, visas, emigration rules, employment contract laws, travel formalities etc. It is also an authorized agency for manpower recruitment. It has an online platform for employers to hire quality talent as well

¹²⁶ The Indian Emigration Act, 1983

as a 16-hour call center with a toll-free number. It is noteworthy that even though the Overseas Department at NORKA is authorized to recruit domestic workers, they are reluctant to do so because domestic workers are not covered by any protective legislation in the Gulf countries and hence cannot obtain legal redress there. Faced with numerous issues confronting the workers, NORKA¹²⁷ has a scheme for providing legal assistance to weaker sections of returnees and another to give assistance to returnees in distress to cover medical bills, funeral expenses etc. as well as a Karuna scheme to repatriate deceased workers. NORKA also provides an identity card for those working abroad with residential permission for more than six months. Such persons are entitled to accident coverage of INR 200,000 (USD 4,444). In case of harassment, NORKA assists with repatriation. There is a special Non-Resident Indian (NRI) cell at the Police headquarters in Thiruvananthapuram to deal with issues of the NRIs. It mainly takes up cases of cheating by recruiting agents.

NORKA roots is thus setting an example through their abovementioned schemes and one can borrow from these ideas.

What We Propose- Solutions

Taking examples of Legislative and Legal provisions from across the world, we propose the following solutions –

1. We require a provision where all the domestic workers in a district is educated or is provided awareness classes regarding their rights.

Argentina's Legislative Decree 326/56 on Domestic Service¹²⁸, requires that a domestic worker be given a work book provided by the Ministry of Labor and Welfare that includes a copy of all relevant laws in place at the time of employment.

Austria's Federal Act Governing Domestic Help and Domestic Employees¹²⁹, requires the employer of a domestic worker, at the commencement of the employment relationship, to provide the worker with a copy of applicable laws, including minimum wage laws, and collective agreements, or with material published for this purpose by the workers' organization concerned.

South Africa's Sectoral Determination 7¹³⁰, requires that employers of domestic workers make a copy of the law or an official summary accessible to the domestic worker in the

¹²⁷ *Norka Roots, Kerala Government, (Aug 14, 2019, 16:30 PM), www.jobsnorka.gov.in*

¹²⁸ *Article 11, Legislative Decree 326/56 on domestic service, dated 14 January 1956, and the related Decree 7979/56, dated 30 April 1956.*

¹²⁹ *Section 2 (2), Federal Act Governing Domestic Help and Domestic Employees, Act No. 60, dated 23 July 1962, as amended.*

¹³⁰ *Section 30, Sectoral Determination 7: Domestic Worker Sector, binding as of 1 September 2002*

workplace: Every employer on whom this sectoral determination is binding must keep a copy of the sectoral determination or an official summary available in the workplace in a place to which the domestic worker has access.

2. We require a legislation that establishes an autonomous apex body at the central level which sets the rules and regulations and controls the functioning of the state and district level boards.

Convention No. 189¹³¹, Article 18: “Each Member shall implement the provisions of this Convention, in consultation with the most representative employers’ and workers’ organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.” And India being a signatory to this convention it has a responsibility to do the same. The state governments of Kerala, Maharashtra, Tamil Nadu have already constituted Welfare Boards for domestic workers. We require a central level welfare board as well.

3. We need a team of labor inspectors at the state and district levels to monitor and inspect domestic workers living and working conditions so they can take up the issues to the state or district level boards respectively.

In South Africa, the labor inspection services are responsible for monitoring compliance with Sectoral Determination 7¹³². Under the BCEA¹³³, labor inspectors have the right to enter private homes following authorization by the Labor Court. While the possibility to apply for such an authorization is rarely used, labor inspectors have carried out campaigns targeting domestic work since 2005. Households in certain designated areas during a specified period of time were contacted in advance and invited to receive labor inspectors. Depending on the extent of a given campaign, several hundred households were visited each time. Questionnaires for employees used by the inspectors included 20 questions on working conditions and social security. For example, in January 2011 labor inspectors visited some 200 households in the Western Cape province, out of which roughly half were fully compliant with the applicable legislation. During follow-up inspection, previously non-compliant employers were generally found to be compliant.

4. The hours of work should be limited to 48 hours and the employers must be required to maintain a record book that must be periodically inspected by the labor officers and in case of variations, the book should be presentable to the labor inspectors and the district level boards.

¹³¹ Article 18, *Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation (No. 201)*;

¹³² *Sectoral Determination 7: Domestic Worker Sector, binding as of 1 September 2002*

¹³³ *Section 65 (2), Basic Conditions of Employment Act, Act No. 75 of 1997*

Finland's Act on the Employment of Household Workers¹³⁴, requires the employer keep track of extra hours worked by domestic workers: Employers shall draw up a work schedule indicating the beginning and end of working hours, the break ... and the weekly rest period. Employers shall keep a separate register on any emergency work and overtime and the increased wages paid on them. Any Sunday work and the increased wages paid for it, and any work performed during weekly rest period and the resulting reduction in regular working hours or separate remuneration paid for it must also be recorded in the register. It also requires the work schedule and register to be kept available for inspection by the worker and, on request, be made available for inspection by the occupational safety and health authority. Employers must on request provide the worker or his or her representative with a written report on the records concerning the workers in the said register.

5. A domestic worker who is aggrieved by the grievance redressal system should be able to appeal to the state level board or a special court instead of having the collector¹³⁵ resolve the issue.

In Kazakhstan, with respect to article 217 of the Labor Code¹³⁶, individual labor disputes between the domestic worker and the employer are resolved by agreement of the parties and (or) in the court. In the Labor Codes of Kyrgyzstan¹³⁷, the Republic of Moldova¹³⁸ and the Russian Federation¹³⁹, individual labor disputes between the worker and the employer (physical person), which cannot be resolved upon mutual agreement are brought to the court under the procedure established by the labor law.

6. We require more stringent punishment for offenders, and for non-compliance of regulations.

The Pluractional State of Bolivia's Household Workers Act, 2003¹⁴⁰, Article 21, setting out various obligations of the employer, includes a clause regarding respectful treatment and refraining from abuse: Employers shall be obliged to: (a) treat household workers with consideration and respect, in keeping with human dignity, refraining from physical or verbal abuse. ... Section 23 of the Act assigns responsibility for investigating complaints from domestic workers regarding abuses to specific public authorities: The Brigade for the Protection of Women and the Family, the Police Force, the Public Prosecutor's Office and the competent authorities shall receive complaints or claims lodged by household workers concerning abuse, physical assault and sexual or other harassment by employers, children, relatives or others, and the appropriate investigations shall be initiated by the competent authorities. The institution which prosecutes or investigates the complaint shall immediately inform the Labor Inspectorate of the facts of the case so that wages and social

¹³⁴Section 31, *The Employment of Household Workers, Act No. 951 of 1977 (as amended up to Act No. 73 of 2001)*

¹³⁵ Pg 15, Section 50(5), Chapter VI, *The Domestic Workers (regulation of work and social security) bill, 2017,*

¹³⁶ Labour Code of the Republic of Kazakhstan, 15 May 2007, as amended.

¹³⁷Article 365, Labour Code of 4 August 2004, as amended.

¹³⁸Article 288, Labour Code of 28 March 2003, as amended.

¹³⁹Article 308, Labour Code of 30 December 2011, as amended.

¹⁴⁰ Domestic Workers Act, dated 3 April 2003.

benefits may be duly paid without the legal actions being suspended. Criminal acts shall be referred to the Public Prosecutor's Office for prosecution.

In Singapore, the Penal Code of Singapore¹⁴¹, provides for specific offences against the integrity of domestic workers, such as causing hurt or grievous hurt, wrongful confinement, assault or using criminal force, or acts intended to insult the worker's modesty. Penalties imposed on employers or other household members for such crimes can be 1.5 times as severe as they would have been had that offence been committed against a person other than a domestic worker. Employers found guilty of psychological or physical abuse, exploitation or ill-treatment or other criminal offences against domestic workers will be barred from employing further domestic workers.

Conclusion

Although the first step towards bringing about a positive change in the working conditions would be through proper legislative action, it is equally important that a change be brought in the mindset of the people, and the social stigma surrounding their job be done away with. We must listen to them, their plight, and the government must work with domestic worker unions and NGOs that work in this field to reach out to this community and work for their betterment. In the same way, migrant domestic workers are integral to the economy of our country and therefore institutionalizing the whole migrant workers sector in a better manner will help the workers and the country in return. They too, are human, citizens of our country and are entitled to the same rights as we are.

¹⁴¹ Section 72, Penal Code, as amended by Act 18, commencing 15 May 1998.