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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

HUMAN RIGHTS OF DOMESTIC HELP WORKERS

AUTHORED BY - W.V. SOPHIA STELLA SARGUNAM

ABSTRACT:

Human right is universal rights entitled for any individual. A life to live with dignity is the basic human rights of any person. The dignity of any individual includes various aspects. To be respected and protected in a course of employment is a manner of treating a worker with dignity. As there are various legislations related to workers or labours, they are said to be protected and guaranteed with the basic rights. But the question arises whether Domestic help workers are protected with basic human rights. Domestic help workers are such workers who belong to be unorganized sector; they are not governed by any legalisations. This means that they are not protected through any legislation. This paper concentrates on the human rights of domestic help workers. The paper starts with the discussion on who are domestic workers. Followed up by the detailed study on how is the condition of domestic workers in India, that includes a issues such as working conditions, work hours, leave, pay, and other issues related to the engagement of them in help and household works. It also focuses on the legislations and legal protection given across the globe. Following the same the author does an analysis on the legal protection guaranteed in India. The paper explains need for separate legal enactment which would protect the rights of the domestic workers. Thus this paper deals with the human rights of domestic help workers and concentrates on the need to protect them through legislations.

Domestic workers large working forces:

Domestic workers are the largest working sectors, who are unorganized. These domestic help workers are engaged in doing household works or works that are within the circle of a home. The working community are not defined in any legislation in India and just referred as domestic help workers based on the work they do. Whereas international labour organization has defined the domestic workers as *“Domestic work refers to housework such as sweeping, cleaning utensils, washing clothes, cooking,*

caring for children and such other work which is carried out for an employer for remuneration.¹”

Throughout the world for many people this sector is as importance source of occupation. When we see carefully we can understand that majority of the people who engaged in domestic help works are from vulnerable community among which more are women and children.

In India, the people engaging in domestic help works are mostly from schedule class, schedule tribe, backward class, illiterate, unskilled, etc and as seen throughout the world even in India majority people who are engaged are women and children.

From the above we can understand that people involving in domestic help works are normally people who are in financially lacking and who needs little money to satisfy their basic needs. Generally people who lack proper education or unemployed but still needs to support their basic living they engaged in these helping works at houses.

Evolution of Domestic help works:

From history we can understand that the concept domestic help workers were evolved from the worst practice called slavery. In early days slaves were made to do household chores without any remuneration, which eventually developed into paid works. The concept of slavery has converted into domestic help works from the early 19th century. In the evolution, when colonization was happening across the globe the workers are employed for the domestic helping work they render and they are paid with certain remuneration. When reading about the mid-19th century and early modern period we can understand that unskilled people were engaged in household helps and the employers paid them some remuneration. Earlier this was witnessed in very few houses later which have become common throughout the world.

And if we could observe it well we could find that the majority of the workforce is women and children. This shows that the employment of domestic workers is mostly from one set of vulnerable group. Though this practice started from slavery concept we can understand that women and children were more suppressed that their rights are still violated in some way or other.

¹ <https://theleaflet.in/domestic-work-a-bleak-reality-of-missing-laws-and-inadequate-rights/> (last visited 03.04.2023)

Domestic help workers in India:

As discussed earlier there are no specific definitions for domestic workers. Whoever helps in household chores, for remuneration are domestic workers. In India, many who are engaged in domestic help works are the people who belong to a particular community or caste of people. The precise number of domestic employees in India is still unknown. According to several sources, the estimates range from 4,75 million (NSS 2005) to above 90 million. While the latter may be overblown, the former is a massive underestimation. It can be consolidated as nearly million people are engaged in India as of now.

These people for very long period of time have been in poverty line or financially backward class, because of their financial issues and to meet their basic needs they engage in this work. Most of the domestic help workers are women and children as they are mostly unskilled labours. And most of the people who are engaged in domestic help work are uneducated people as they lack employment opportunity. In India these domestic workers are very large in strength. In majority of the houses in India they have domestic help workers.

The condition of domestic workers in India:

- **Living condition:**

The living condition of domestic help workers is very low in position. The workers are mostly living in poverty line. Their lack of education makes them earn very less

- **Wages:**

The wages of domestic help workers is very less. They don't have a specific salary. The wages or remuneration depends on the owner and their capacity to pay. In general the wages differ for each domestic worker. The minimum wages does not apply to domestic help workers as that particular legalisation is labour legislation whereas a domestic help worker does not come under labour legislations. Equal pay for equal work also does not apply. For the same work each domestic help workers get paid differently.

- **Leave:**

The leave granted for other workers are fixed. There is provision under various legislations to grant leave for particular days, whereas the domestic help workers lack a weekly holiday itself. They can't even expect for government or national holidays. When they lack the basic holidays it's obviously

understood that various leaves when feeling sick or maternity is not there for them instead they are terminated directly.

- Working hours:

The working hours for domestic help workers is not fixed. They don't work in single place. As the workers are engaged in various domestic help works the timing is nearly more than 8hrs. This affects them both physically and mentally.

- Work engaged:

The domestic works are works like sweeping, cleaning, washing vessels and other helping works for the employers.

Women and children as domestic help workers:

According to available statistics, 93 million women and girls are missing from the world population because of coitus- picky revocation, womanish germicide, malnutrition, abuse, and neglect of girl child. Besides this situation, the crimes against women are also adding day by day. Indeed, domination and demarcation of women are the routine practice of every cultivated society and India could hardly be an exception to it. Indian society faces change and also a extremity in the form of demeaning social values, morals, profitable downturns, and devaluation of sustainable development in a social terrain.² Indians are facing the problems of peril to a woman on their own and again from the outlanders. still, the demands of women for justice are only the issue in books rather than the targets of the community. Despite the actuality of legal vittles concerning the minimal age for work and mandatory training for the 6 to 14 age – group in India, the entry of under-aged children into the labour request is current. Homes push their children into taking up work and employers designedly seek under- progressed labour. Indeed though there's a fat force of adult labour, the reasons, for the actuality of child domestic workers can be mentioned as poverty, adding demand for child domestic labour, and a failure on the part of the State to cover these children. Numerous employers designedly want children as domestic help for dominating them. Indeed domestic workers themselves engage their children in this work for satisfying their family needs. Child domestic workers are also subordinated to forced labour & trafficking.

² https://shodhganga.inflibnet.ac.in/bitstream/10603/392653/10/11_chapter%203.pdf (last visited 01.04.2023)

Human rights violations faced by Domestic help workers:

Human rights are inalienable rights which are guaranteed just because we are humans. Human rights are vast and it includes every right to lead a life with dignity. These domestic workers lack various rights. From the above we can understand the condition of the domestic workers. From the same we can understand how the human rights of people are getting violated. The wages, time of work and leave everything somehow or other violated the human rights of domestic help workers. Other than this the most worst human rights violation is domestic violence. As many women and children are engaged in domestic help work many sexual harassment and violence happens for the domestic help workers.

International protection for domestic help workers:

The Domestic Workers Convention, ILO No. 189 adopted in 2011, granted millions of domestic workers the status of workers, further empowering them to defend their rights and combat harassment and violence. Besides, the ILO Constrained Work Convention, embraced in 2014, requires part states to take successful measure to forestall constrained work, safeguard casualties and guarantee their admittance to equity. Particularly, nations must guarantee that all workers in all industries are covered by the relevant legislation. This obligation is especially important for domestic workers because they don't always get the same rights and protections as workers because the national laws don't always treat them like workers.

However, the Domestic Workers Convention No. 189 has been ratified to date by 25 countries. Only 25 nations have ratified the Forced Labour Protocol, while another 30 or so have enacted laws or policies to protect domestic workers. Domestic workers should be protected from violence and harassment by governments, employers, workers, and individual households alike.

Since the relinquishment of the Domestic Workers Convention No. 189, the ILO espoused a global strategy to support Governments, workers and employers to make decent work a reality for domestic workers. Through this strategy, the ILO has supported some 60 countries to extend protections to domestic workers, insure compliance with these norms, shift morals, and strength the representation of domestic workers and employers of domestic workers. These country- position guests on programs

similar as working time, stipend, social security, migration, labour examinations and organizing have been proved.³

Legal framework in India⁴:

The primary cause of domestic worker abuse and exploitation is the absence of legal or regulatory frameworks to protect this uncontrolled sector of employment. Only a few laws protect the rights of domestic workers, and reports of torture, beatings, and sexual assaults against them are constantly in the news.

Aruna Roy, a social activist, the National Platform for Domestic Workers, and the non-governmental organisation Common Cause petitioned the Supreme Court to establish laws protecting domestic workers' rights. The petition demanded that domestic work be acknowledged. In accordance with the fundamental right protected by Article 21 of the Constitution, it was also demanded that the workers' working hours be restricted to eight per day and that they be required to take one day off each week. The Minimum Wages Act of 1948 finally recognised this type of job as a result of the petition. The Act addresses the requirement that employees be paid a minimum wage. State governments have the authority to amend the law, thus several state governments updated the Act to include domestic workers in the definition of "worker."

The Unorganized Workers' Social Security Act of 2008 aims to protect the social security and welfare of unorganised workers. A national and state social security board must be established as per this Act's requirements in order to recommend social security policies that offer workers various health, service, and pension benefits. Domestic carers are covered by the provisions of this statute.

According to Section 22 of the Domestic Workers (Registration Social Security and Welfare) Act of 2008, a domestic worker who lives at the workplace is entitled to annual leave with pay for a minimum of 15 days per year. Anyone found guilty of sexually harassing a domestic servant or child is subject to a penalty of up to seven years in prison, a fine of Rs. 50,000, or both under Section 23 of the Act. The Domestic Workers Welfare and Social Security Bill of 2010 was drafted by the National

³ https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_641738/lang--en/index.htm (last visited 05.04.2023)

⁴ <https://theleaflet.in/domestic-work-a-bleak-reality-of-missing-laws-and-inadequate-rights/> (last visited 05.04.2023)

Commission for Women and aimed to bring the vulnerable workforce of domestic workers into the mainstream and assist in addressing complaints about unpaid wages, starvation, barbaric work hours, and verbal, physical, and sexual abuse. It also attempted to create a law within the country. The proposed law stipulated that no minor shall be employed as a domestic worker and was intended for domestic workers over the age of 18. Nonetheless, it was never incorporated into the law.

The Lewd behaviour of Ladies at Working environment (Counteraction, Disallowance and Redressal) Act, 2013, was passed by the Parliament as per the High Court's rules in its milestone Vishakha judgment of 1997 to make a preventive move against inappropriate behavior in the working environment. This legislation ensures the establishment of complaint panels and a local complaint body for domestic care providers to address complaints from female employees.

In spite of adverse circumstances, domestic workers and the organizations that represent them have made modest but significant progress toward securing their rights. The Pradhan Mantri Jan Aarogya Yojana, the Sexual Harassment at Workplace Act, and the Unorganized Workers' Social Security Act now cover domestic workers nationwide. Additionally, the Maharashtra Welfare Board for domestic workers has been established and minimum wages for domestic workers have been announced by six state governments.

Due to a lack of adequate legal framework, domestic servants in India are exploited. Their right to live a free and dignified life is in jeopardy because the law is still ill-equipped to deal with the particular issues that arise in this industry. Endeavors are required for better area coordination into the economy, and guaranteeing that this arrangement of representatives will get equity with the new legitimate structure.

The positive steps taken:

The highest court of India, the Supreme Court has paved way and supported the domestic workers through various cases. The Judges has provided various On the other hand, before years many children in India were engaged in domestic works but comparatively the children who have been sent to these works are reduced through few steps taken at both state and national level. The government of Tamil Nadu brought in the concept of mid-day meal scheme which not only had a motive to provide nutritious

food to children it also attracted many children who were engaged in domestic works to go to school. This scheme in Tamil Nadu has seen various developments. This system which had various benefits was adopted by various states.

Challenges and Areas for Improvement:

Despite the progress made, challenges persist in the effective implementation of these legal provisions. Many domestic workers are still unaware of their rights, and enforcement mechanisms are sometimes inadequate. The informal nature of domestic work also poses challenges in monitoring and regulating working conditions.

1. Awareness and Education:

Initiatives to raise awareness about the rights and entitlements of domestic workers are essential. This includes educating both employers and employees about the legal provisions in place to ensure compliance and accountability.

2. Enforcement and Monitoring:

Strengthening enforcement mechanisms, such as labor inspections and reporting mechanisms, is crucial for effective implementation. Collaboration between government agencies, non-governmental organizations (NGOs), and community-based organizations can enhance the monitoring of working conditions.

3. Standard Employment Contracts:

Encouraging the use of standard employment contracts between employers and domestic workers can help define terms and conditions of employment, ensuring clarity and fairness.

Need for new legislation:

It's under these circumstances that a public Platform, developed by a coalition of trade unions to demand comprehensive legislation, seeks the help of the Government. Though various steps have been taken by all the three pillars Judiciary, Legislative and Executive. Still the task doesn't involve any substantial fund allocation and since the result lies in regulating reclamation and conditions at work in a sector where the picture of services and the systems of remuneration is in the private realm. Presently, the private working space cannot be hidden from public aspect.

It must be an open transparent space where reclamation and conditions of work are recognized and regulated by the law of the land. For this there's need of a special law along the lines of other laws similar as the wharf Workers (Regulation of Employment) Act, 1948; Beedi and Cigar Workers (Conditions of Employment) Act, 1966; The Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969; and The structure and Other Construction Workers (RE&CS) Act, 1996. The useful guidelines from the ILO, as contained in the ILO Convention on Decent Work for Domestic Workers (Convention 189) to legislate legislation to cover this sector, has formerly been created. What's needed now is the political will to legislate a comprehensive law to guard the rights of this sector and the provision of just social security.⁵

Conclusion:

From the above we could understand that we do not have any proper regulation or protection to cover the basic rights of the domestic workers. The domestic workers not been governed under any law and the workers are not even recognized as labours. The legal rights of domestic help workers in India have come a long way, with legislation providing a foundation for their protection. However, continued efforts are necessary to bridge the gap between legal provisions and their effective implementation. Empowering domestic workers through awareness, education, and stringent enforcement measures will contribute to creating a more just and equitable working environment for this vital workforce. Upholding the human rights of domestic workers not only benefits the individuals involved but also contributes to the overall well-being of society.

⁵ <https://www.wiego.org/sites/default/files/resources/files/Domestic-Workers-Laws-and-Legal-Issues-India.pdf> (last visited 07.04.2023)