

NOTES AND COMMENTS

EMPLOYMENT RIGHTS PROTECTION AND CONDITIONS OF DOMESTIC WORKERS: A CRITICAL APPRAISAL

Abstract

Domestic workers, whether inside or outside India, due to feeble bargaining powers as compared to employer, do not have sound negotiating ability for determining terms and conditions of employment. Employers can terminate employment of domestic workers at any time without following any process and without paying entitled benefits for termination of service. Catena of statutory protections to domestic workers under domestic laws, have been confined to statute book only. Ground reality is just opposite to the rule book. Troubles of domestic workers revolve around deplorable and pathetic working conditions and modest rates of employment benefits. This paper is an endeavour to examine the scope of human rights protection pertaining to working, living and social security protections at national and international levels to domestic workers. This paper, would also examine the existing legislative framework and pending bills/drafts protecting domestic workers in India and abroad.

I Introduction

IN ACCORDANCE with the International Labour Organisation (ILO) Report on Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection (DW Report), 2013,¹ at least 52.6 million women and men have been occupied, as their main profession, in domestic work. In order to provide a living for themselves and their families, women domestic workers across the world are driven to such work in view of limited options available to them. According to the report, domestic work contributes for 1.7 percent of total employment worldwide and approximately 3.6 percent of all wages. The Asia and the Pacific, where 41 percent of the total domestic workers have been employed, is the least protected for domestic workers. The middle east has a share of 4 percent.² It is also seen that female workers are the overwhelming majority of domestic workers, constituting nearly 43.6 million

1 International Labour Office Geneva, Report on Domestic workers Across the World: Global and regional statistics and the extent of legal protection report 2013, *available at*: http://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/-publ/documents/publication/wcms_173363.pdf (last visited on Mar. 2, 2015).

2 *Id.*, ch. 3 at 19.

workers of the total work force in the globe or 83 percent of the total domestic work force.³ About 25% of domestic workers are below the age of 14 years.⁴

In January 2014, a criminal court in Delhi charged, a member of Parliament and his wife for committing serious crimes such as murder, wrongful confinement of their domestic servants and criminal intimidation and destruction of evidence under the Indian Penal Code, 1860 (IPC). It has been reported that the accused used to beat up the deceased domestic servant and two other domestic helps and compelled the servants to work by holding them captive. Moreover, domestic servants were not permitted to move out of the residential complex of the accused.

The above instance is a true reflection of living and working conditions of domestic workers across the world. According to a reported news article,⁵ an old woman, aged around 40 years, an illiterate domestic worker was employed by a middle class family for many years. The said worker was beaten, raped and kept as a slave without any benefits and protection under the labour legislations and international instruments on the issues. She was compelled to work for, all the days a week, 17 hours per day, cooking and cleaning for eight family members. She had been threatened and attacked on numerous occasions. Her passport was confiscated and she was also kept like a convict by those employers. The said domestic worker was rescued by the Migrant Workers Charity and Human Rights' Group with the help of domestic police from the powerful and well-connected abusers.⁶ It is deplorable that the gross violation of human rights was being carried out by the so called well informed and educated strata of society.

It is seen that problems of domestic workers, whether employed in India or outside India, are about prolonged working hours, deplorable working conditions, irregular wages, sexual harassment, discrimination, and lack of right to freedom of association.

3 *Ibid.* See also, International Labour Organization: Global and regional estimates on domestic workers, Domestic Work Policy Brief No. 4 (Geneva, 2011) and Domestic workers across the world (Global and regional statistics and the extent of protection), Jan. 2013.

4 National Domestic Workers Alliance, Home Economics: The Invisible and Unregulated World of Domestic Work (Center for Urban Economic Development, University of Illinois, Chicago, 2012), available at: <http://www.domesticworkers.org/pdfs/HomeEconomicsEnglish.pdf> (last visited on Jan. 4, 2015).

5 'Indian woman raped, enslaved in Britain for years' *Times of India*, New Delhi, Apr. 21, 2013, available at: <http://timesofindia.indiatimes.com/nri/other-news/Indian-woman-raped-enslaved-in-Britain-for-years/articleshow/19650224.cms> (last visited on Mar. 1, 2015).

6 *Ibid.*

This paper has been developed in seven parts. The first part deals with the introduction into the ground realities pertaining to the treatment of domestic workers employed in India and outside India. The second part briefly highlights the problems of domestic workers in general. The third part focuses on international instruments evolved by the United Nation (UN) and the ILO to protect and promote the interests of domestic workers. Part four deals with the protection to domestic workers under various domestic labour laws in India. This part will also examine the scope of some draft bills on domestic workers in India. The fifth part examines the nature and scope of social security agreements between Indian and some countries. Part six highlights some of the main threats to the domestic workers at national and international levels. The seventh part focuses on viable solutions to the problems of such workers in India, by framing an effective and efficient domestic law. This part also endeavours to provide solutions to the problems of domestic workers engaged outside India.

II Domestic workers and their problems

The expression 'domestic worker' is defined in various conventions of the ILO and the UN for the purpose of providing protection to such workforce. The term domestic worker may be expressed as a valuable human resource, performing household work in the private households for some consideration for services rendered.

Domestic workers can be categorized into two classes: live-in residential domestic workers and non-residential domestic workers. Domestic workers, who often reside in household for which they work are called live-in domestic workers. Such workers depend upon their employers for basic requirements, such as food, clothing and shelter. A number of specific issues arise in respect to live-in arrangements, including the need to ensure decent living conditions, fair working time arrangements, freedom of movement and communication. The physical proximity of domestic workers to household members poses a heightened risk of abuse and harassment.⁷

Non-residential domestic workers visit employers for working only. Such workers do not stay at employer's residence for work. In many occasions, domestic workers including non-residential workers are compelled to routinely work 12-20 hours without any provision of weekly holiday. Social security protections, in case of any contingencies such as sickness, disablement, death, and maternity benefits, are beyond the imagination of these workers.

⁷ *Supra* note 4.

Amongst the other low income countries, India is also the origin, transit and a destination for domestic workers. India receives domestic workers from its neighboring countries. India also sends domestic workers to countries in the middle east and west Asia, United Kingdom (UK), United States (US) and some parts of Europe. Domestic workers, outside India, are predominantly exposed to ill-treatment, with intimidations of expatriation, prejudiced labour laws, language barriers, withholding of documents by employers, and exploitative employment agencies.

Employment of underage (below 18 years) domestic workers is an increasing problem in India. Around 12.6 million underage domestic workers are said to have been employed in India.⁸ It has been observed that much of the work force employed in domestic work continues to be unrecognized and indiscernible. Domestic workers are susceptible to prejudice in relation to the terms and conditions of employment and to other abuses of human rights,⁹ such as long working hours, denial of weekly holidays, irregular payments, sexual abuse, harassment, lack of bargaining capacity and job insecurity.

III Employment protection to domestic workers under international instruments

The ILO and the UN have played a crucial role in protecting and promoting interests of workers. Recognition and protection of rights for domestic workers is an essential step in breaking domestic work away from the informal economy with its perpetuation of exploitation and inadequate working conditions.¹⁰ It is seen that the

8 *Supra* note 4.

9 Preamble of the Domestic Workers Convention, 2011. See also, other related conventions and recommendations of the ILO as under:

- a) Conventions: C097 Migration for Employment Convention (Revised), 1949.
- b) Conventions: C156 Workers with Family Responsibilities Convention, 1981.
- c) Rec Supplemented: R201 Domestic Workers Recommendation, 2011.
- d) Recommendations: R198 Employment Relationship Recommendation, 2006.

10 The core labour standards provides the following rights to workers all over the world: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No.98); the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105); the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) the Wage-Fixing Machinery Convention, 1928 (No. 26) and the Minimum Wage Fixing Convention, 1970 (No. 131); the Protection of Wages Convention, 1949 (No. 95); the Maternity Protection Convention, 2000 (No. 183); the Workers with Family Responsibilities Convention, 1981 (No. 156); the Termination of Employment Convention, 1982 (No. 158); the Private Employment Agencies Convention, 1997 (No. 181); the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary

Migration for Employment Convention (Revised), 1949¹¹ has been ratified by 47 member nations out of 185, which does not include the US, China, the UAE, Singapore, Thailand and India. The UK has ratified the convention with the exclusion of annexures I and III. The Migrant Workers (Supplementary Provisions) Convention, 1975¹² has been ratified by 23 member nations which do not represent the developing and developed economies of the globe.

It is very important to mention that the ILO as well as the UN, to ensure the compliance of protection to workers under domestic legislations throughout the world, has come out with some declarations in the form of conventions and recommendations. But the ground reality on the protection of domestic workers is quite different from the municipal commitments. There is a wide gap, which is deliberately being created by employing countries, between preaching and practising of international standards on domestic workers. The hypocritical behavior of the nations is one of the main contributing factors for the conditions of domestic workers. Domestic workers have been exploited, for the sake of economic development and other social, economic and political reasons, by majority of nations across the globe.

Despite ratification of UN and ILO conventions by majority of member nations, the living and working conditions of domestic workers have not improved much, which is apparent from reported instance on ill-treatment of domestic workers. The following two main conventions are analysed to focus only on the requirements of the domestic workers.

United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

This convention was adopted at the 45th session of the General Assembly of the UN.¹³ It is important to note that the said UN convention of 1990 provides similar kind of protection to migrant domestic workers, which have been listed under various conventions of the ILO.¹⁴ The convention provides for certain human rights

Provisions) Convention, 1975 (No. 143), *available at*: <http://www.ilo.org/global/standards/lang—en/index.htm> (last visited on Mar. 2, 2014).

11 ILO Convention No. 97.

12 ILO Convention No. 143.

13 The said convention was brought into force with effect from July 1, 2003 by the Resolution 45/158 of Dec. 18, 1990.

14 Convention concerning Migration for Employment (No. 97), Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), Recommendation concerning Migration for Employment (No. 86), Recommendation concerning Migrant Workers (No. 151), Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105).

under part III,¹⁵ which is applicable to both documented and undocumented workers, and rights under part IV that are available to regular workers.

The convention also provides for protection against the dehumanization of migrant workers and members of their families. It is also stressed upon, by the convention, that the protection against deplorable living and working conditions and physical abuse including sexual abuse continue to be part of right to life of migrant workers and their family members.¹⁶ The convention also stipulates some protection against cruel, inhuman or degrading treatment or punishment¹⁷ as well as slavery or servitude and forced or compulsory labour by the migrant workers and family members.¹⁸

It is important to mention that some fundamental provisions such as articles 25, 27 and 28, provide for equality with the nationals of the host country in respect of remuneration and conditions of work such as overtime, hours of work, weekly rest, holidays with full pay, safety, health, termination of work contract, minimum age, and restrictions on daily and weekly works.¹⁹ Further, the convention also guarantees the equality with nationals in case of social security protections²⁰ and medical care in case of sickness.²¹

It has been observed that most of the developed and developing nations like the US, the UK, Australia, Hong Kong, Spain, Canada, India, China and Singapore have not ratified the said convention till date. It has been reported by the ILO sources that 47 member states have ratified or acceded to the convention. Moreover 18 countries have also signed as an indicator or possible ratification or accession.²² Even if there are municipal laws to protect workers of any origin, there are problems of efficient enforcement which has resulted in harsh treatment to migrant workers by employers.

The International Labour Organisation Domestic Workers Convention, 2011²³

The ILO, in a conference held in 2011 decided to bring domestic workers worldwide under the domain of labour standards and also has marked 16th June as the International

15 The convention on migrant workers does not create new human rights, but ensures the compliance of various human rights which are available under the Universal Declaration of Human Rights (UDHR) 1948, and other conventions and treaties adopted by the member nations.

16 United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, art. 9.

17 *Id.*, art. 10.

18 *Id.*, art. 11.

19 *Id.*, art. 25.

20 *Id.*, art. 27.

21 *Id.*, art. 28.

22 Report on Ratification of the UN Convention on the Rights of All Migrant Workers and Members of Their Families, National Network for Immigrant and Refugee Rights, USA, *available at*: <http://www.nnirr.org/~nnirrorg/drupal/migrant-workers-convention>, (last visited on Apr. 7, 2015).

23 100th Session of the International Labour Conference, June 16, 2011.

Domestic Workers Day. The Domestic Workers Convention, 2011 and Domestic Workers Recommendation, 2011 of the ILO aim at the safeguard of workers performing domestic work within an employment relationship. The said convention was brought into force with effect from September 5, 2013. It is noticed that this is the first time that the ILO has formulated some standards dedicated to any particular group of domestic workers.

These instruments call for legal protection of all domestic workers, irrespective of status of employer whether they are employed by private individuals and householders or enterprises or other organizations. These instruments cover part, time and full-time workers, whether employed under live-in or live-out arrangements.²⁴

The convention also ensures that minimum age of domestic worker shall be decided according to provisions of the Minimum Age Convention, 1973²⁵ and the Worst Forms of Child Labour Convention, 1999.²⁶ It further reiterates that the minimum age cannot be lowered by national laws and regulations for workers generally.²⁷

The convention has provided various kinds of protection to domestic workers in the form of freedom of association, recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, abolition of child labour and elimination of discrimination in respect of employment and occupation.²⁸ Further, the convention also imposes an obligation upon member nations for ensuring fair terms of employment as well as decent working conditions and respect for their privacy.²⁹ Domestic workers are entitled to keep in their possession their travel and identity documents.³⁰

24 International Labour Office, *Effective Protection For Domestic Workers: A Guide To Designing Labour Laws* (Geneva, 2012). According to the Report of Domestic Workers Across the World (legal protection for domestic workers), “only 10 percent of all domestic workers (or 5.3 million) are covered by general labour legislation to the same extent as other workers. By contrast, more than one-quarter 29.9 percent, or some 15.7 million domestic workers are completely excluded from the scope of national labour legislation. Between these extremes, intermediate regimes exist. Exclusions and partial coverage result in weaker protection for domestic workers in a number of important areas”. The report focuses on three aspects, namely: (i) working time regulation; (ii) minimum wage coverage and in-kind payments; and (iii) maternity protection. Based upon statistical data on the number of domestic workers and on information on provisions in national legislation, the report provides new global and regional coverage estimates for each of these aspects. *Supra* note 1.

25 ILO Convention No. 138.

26 ILO Convention No. 182.

27 *Supra* note 23, art. 4.

28 *Id.*, art. 3.

29 *Id.*, art. 6.

30 *Id.*, art. 9.

The convention also ensures equal treatment to domestic workers and other workers in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements.³¹ The convention further emphasizes that domestic workers shall be paid directly in cash at regular intervals at least once a month.³² According to the convention, municipal laws must provide for adjudicatory mechanism, with simple process and power to impose penalty, for redressal of grievances of domestic workers.³³ The convention does not affect more favourable provisions applicable to domestic workers under other international labour conventions.³⁴

It is pertinent to specify that the said convention has been ratified by a dozen member nations which include Italy³⁵ Mauritius, Philippines, Bolivia,³⁶ Thailand,³⁷ Uruguay,³⁸ Germany,³⁹ Ecuador,⁴⁰ and Costa Rica.⁴¹ Out these 12 ratifications, only five members have brought the convention into force and others have not implemented after the ratification of the convention.

31 *Id.*, art. 12

32 *Ibid*

33 *Supra* note 23, arts. 16 and 17.

34 *Id.*, art. 19.

35 Italy is the fourth ILO member state and the first EU member state to ratify this instrument on Jan. 22, 2013 which seeks to improve the working and living conditions of tens of millions of domestic workers worldwide, *available at*: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460 (last visited on Apr. 24, 2015).

36 Bolivia is the fifth ILO member state and the second Latin American member state to ratify this instrument on Apr. 18, 2013, *available at*: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460 (last visited on Apr. 24, 2015).

37 On Nov. 9, 2012, a new Ministerial Regulation No. 14 (B.E. 2555) entered into force improving workplace rights for domestic workers in the Kingdom of Thailand. Issued under the Labour Protection Act B.E. 2541 (1998), the regulation applies to employers employing workers to perform domestic work which does not involve business operations. It aligns several aspects of the legislation with the Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201), *available at*: http://www.labour.go.th/en/attachments/article/18/Labour_Protection_Act_BE_2541.pdf (last visited on May 10, 2015)

38 Mauritius, Sep. 13, 2012, Convention in force; Philippines, Sep. 05, 2012, Convention in force; Uruguay, Jun. 14, 2012, Convention in force, *available at*: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460 (last visited on Mar. 11, 2015).

39 Ratified the Convention on Sep. 20, 2013.

40 Ratified the convention on Dec. 18, 2013.

41 Ratified the Convention on Jan. 14, 2014.

Brazil has ratified the convention and accordingly amended its Constitution to implement a new legislation covering around six and a half million domestic workers and other workers. The constitutional amendment provides for some fundamental human rights for domestic workers, which includes right to overtime pay, a maximum eight hour working day and 44 hours working week, and compensation in case of death and other contingencies related to employment.⁴²

Major developed countries and other developing nations where most of Indian migrant domestic workers have been employed, have not ratified any convention related to the protection of domestic workers. Such inaction of the part of these nations is a clear reflection of disregard to the protection of domestic workers.

IV Protection to domestic workers under the municipal law

It is pertinent to highlight that domestic legislative enactments are the main drivers of providing any protection to workers. According to the ILO DW Report, 2013, nation's labour legislation is the main instrument for granting legal protection to workers. When workers are not covered under any municipal legislation, it would lead to mass exploitation and violation of human rights of domestic workers and would also considerably weaken their position relative to other workers.

Domestic workers lack the negotiating power as well as the capacity to seek enforcement of their contractual rights in court. A useful starting point for an inquiry into the extent of legal protection for domestic workers is therefore the scope of national labour legislation and the extent to which it applies to domestic workers.⁴³

Data collected and analyzed by the ILO in its report of 2013, shows that about 25.1 million domestic workers, across the world, which is about 47.8 percent of the total domestic workers, are covered partly by the specific labour laws. Some 1.5 million domestic workers (2.8 percent of the total domestic workers) are covered only by subordinate regulations. Around five million domestic workers (9.5 percent of the total domestic workers), who live in federal countries, are shielded by provisions that differ between different states.⁴⁴

Further, the DW Report stipulates that only 10 percent of the world's domestic workers (5.3 million) are shielded by general labour laws to the same extent as

42 ILO News, "Momentum grows for domestic workers legislation in Brazil", *available at*: http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_208727/lang-en/index.htm (last visited on Apr. 24, 2015).

43 *Supra* note 2.

44 *Id.*, ch. 4 at 51.

other workers. Some 15.7 million (29.9 percent) of domestic workers across the globe are completely excluded from the scope of national labour laws.⁴⁵

Domestic workers are unorganised, unregulated and unprotected by major labour legislations. It is equally important to mention that domestic workers, without any formal education and skills, come from the vulnerable part of Indian society, with social and economic backwardness. Most of the domestic workers are not entitled to minimum rates of wages, which has been considered as a fundamental right under article 23 of the Constitution of India. Some state governments, such as Maharashtra, Kerala, Tamil Nadu, Karnataka and Delhi, have included domestic work in scheduled employment for the purpose of fixation of minimum wages for domestic workers under the Minimum Wages Act, 1948. Even after notification for fixation or revision of minimum wages, there is no guarantee that these workers, due to low bargaining capacity against employers and recruitment agencies, will receive the specified rates of minimum wages.

V Position of municipal law in India

Several labour laws in India, like as the Employees Compensation Act, 1923, the Equal Remuneration Act, 1976, Inter-State Migrant Workmen Act, 1979, *etc.*, are directly or indirectly applicable to domestic workers. It is also noticed that domestic services, provided by the domestic workers, are not covered under the Industrial Disputes Act, 1947, which provides for speedy and economical adjudication of disputes and protections to workers. Therefore, a domestic worker cannot approach any labour court for ventilation of his/her grievances related to terms and conditions employment.⁴⁶ The Central Government has also enacted the Unorganized Workers Social Security Act, 2008, for providing social security and welfare benefits to domestic workers.⁴⁷ But the Act of 2008, a contributory scheme with functional limitations, has

45 *Supra* note 2, ch. 4 at 50.

46 The Supreme Court in *Management of Somvihar Apartment Owners Housing Maintenance Society Ltd v. Workmen* (2002) 9 SCC 652, has held that the services rendered by a domestic servant, are purely personal services, thus fall beyond the scope of Industrial Disputes Act, 1947. The same position has also been reiterated by high courts. The Industrial Disputes (Amendment) Act, 1982 (which has not yet been brought into force) for the purpose of defining the term 'Industry' has excluded domestic workers from the ambit of the Act.

47 The National Social Security Board and 11 state social security boards have been constituted for the enforcement of the scheme. Benefits under the Act are provided under the specific schemes *viz.*, Janshree Bima Yojana, Rashtriya Swasthya Bima Yojana and Old Age Pension to certain category of unorganized workers. These schemes generally provides for the life and disability cover, health and maternity benefits, old age protection and any other benefits, *available at* <http://pib.nic.in/newsite/erelease.aspx?relid=87387> (last visited on Mar. 12, 2014).

been confined to limited benefits under the *Rastriya Swasthya Bima Yojana* in some states. The states of Maharashtra,⁴⁸ West Bengal,⁴⁹ and Tamil Nadu⁵⁰ have also enacted some specific laws for domestic workers for the purpose of providing social security benefits on the lines of the Unorganised Workers Social Security Act, 2008. There is no uniformity in the protection of living conditions of employment among the state legislations across the nation.

In order to ensure uniformity across the nation, some initiatives have been introduced by the National Commission for Women (NCW), Government of India and the Government of Delhi, for prevention of exploitation of domestic workers in India. The NCW has drafted a specific bill titled “Domestic Workers Welfare and Social Security Act, 2010” (hereinafter, the ‘draft’). The proposed draft provides for better working conditions, paid weekly holidays, protection against harassment, social security protection and other welfare related measures for domestic workers. The state of Delhi has also drafted a bill titled “The Delhi Private Placement Agencies (Regulation) Bill 2012” for the protection of domestic workers. The paper now analyses some basic features of these initiatives and how far these legislative endeavours have the potential to protect the interests of domestic workers in India.

Draft on Domestic Workers Welfare and Social Security 2010 by the National Commission for Women, India

According to the draft of 2010,⁵¹ the subject matter related to domestic work in India falls under the purview of state jurisdiction and is not covered under the legislative power of the Central Government. The draft has empowered state

48 The Maharashtra Domestic Workers Welfare Board Act, 2008. The Act provides for setting up of a board for the purpose of providing social security benefits to domestic workers in the forms of maternity benefits, accident compensation, funeral expenses, financial assistance for education of children and medical family. It also provides for the process of registration of domestic workers. It is also pertinent that the scheme under the Act is a contributory scheme for the purpose of getting benefits.

49 The West Bengal Unorganised Sector Workers Welfare Act, 2007. The Act provides for setting up of a board for the purpose of providing social security benefits to unorganised sector workers including domestic workers in the forms of health insurance scheme, maternity benefits, pension, death compensation, house building load and advances, financial assistance for education of children and medical family.

50 The Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982. The said Act, through 11 state welfare boards, regulates terms and conditions of employment of 67 employments including domestic workers. The Act also provides for social security protection to domestic workers including dependents of workers, employed in the scheduled employments.

51 Available at: http://ncw.nic.in/PDFFiles/domestic_worker_welfare_and_social_security_act_2010.pdf (last visited on Mar. 12, 2015).

governments to administer the scheme in their respective states through state and district boards. This draft aims to protect and ensure cessation of the exploitation of domestic workers. The draft would apply to the whole of India except Jammu and Kashmir. The draft does not govern domestic workers engaged outside India. Employment of a minor (below 18 years) as a domestic worker or for any such incidental or ancillary work is forbidden.⁵²

The central advisory committee, state board and district boards have been assigned with the responsibility of regulating the proposed scheme under the draft. The district board (hereinafter the 'board') is empowered to grant relief in case of accidents, and provide financial assistance to the education of children, medical assistance and maternity benefits to domestic workers. The draft also stipulates the setting up of a domestic workers welfare fund for the payment of specified benefits. The board has been empowered to arbitrate, through conciliation, disputes pertaining to domestic workers. The board is under obligation to ensure the implementation of the schemes framed by the central advisory committee in consultation with state boards.

As per the stipulation of the draft, every domestic worker may register himself/herself as a beneficiary under the scheme with the board. Any worker, who has attained 18 years of age, but not over 65 years and has been occupied in any domestic work for not less than 90 days during the preceding 12 months, shall be eligible for registering himself as a beneficiary.⁵³ The board has been assigned with the responsibility of regulating the scheme at district levels. The board has been empowered to issue identity card to every beneficiary with his photograph on it along with a passbook to enable him/her to open bank accounts. The board is also under obligation to maintain records containing all details of employment of beneficiaries in the district. The draft also provides for some penalties, cognizable by criminal courts, for violation of the provisions.⁵⁴

A critique of the draft of 2010

It is equally important to mention that the draft provides for discretionary powers to state governments for constituting state boards and district boards for the purposes of enforcing the scheme. A state government cannot be compelled to constitute any state board or district boards. If a state government does not constitute any state committee and district board then the whole purpose of creation of such scheme would be lost. Therefore, the discretionary power of the state government under the draft should be dispensed with in the larger public interest of domestic workers. It must be mandatory for the state governments to constitute boards/committees under it soon after notification of the statute.

52 *Ibid.*

53 *Ibid.*

54 *Ibid.*

The draft is silent on the rates of any contributions and benefits in case of social security and other welfare measures to the beneficiaries. In case of violation of any provisions of the draft, the board is not competent to take cognizance of such default, but the issue may be referred to criminal courts for imposition of any penalty, which have failed to cater to the needs of a common man for access to speedy and economical justice.

It is also suggested that there must be a written agreement of employment between the employer and domestic worker and that agreement must also be approved by the board under the draft of 2010. Such agreement must include in its terms and conditions of employment, fair wages including overtime pay and regular pay rates, access to affordable medical care, secured retirement income, paid leave, and a safe and healthy working environment. Enforcement mechanism under the proposed draft of 2010, such as inspectors should also be made personally accountable for the failure to protect the interests of domestic works. Domestic workers should also be permitted to claim damages from such officers for dereliction of duty.

The fact of the matter is that no one dares and comes forward, in case of violation of any employment rights provided under the draft, to file a complaint against her/his employer. There is no employment protection available to workers if they raise any grievance against their employers. It is recommended that the draft must to be modified to provide security of employment during the currency of disputes/grievances against employers before the appropriate administrative authority. One month notice or one month salary in lieu of notice shall also be given to a domestic worker in case of termination of service by employers.

The Delhi Private Placement Agencies (Regulation) Bill, 2012

The death of two female workers in 2013 allegedly trafficked from Jharkhand for domestic work in Delhi only emphasizes the harsh truth that there are no laws that govern domestic work.⁵⁵ A committee headed by the principal secretary (labour) was created in 2012 for drafting a bill on the protection of domestic workers in the state of Delhi. The Delhi Private Placement Agencies (Regulation) Bill 2012⁵⁶ for domestic workers has been drafted by the committee and the same is also made available at the website of the labour department of Government of Delhi.⁵⁷ The draft provides

55 Ambika Pandi, "Delhi Govt drags its feet on draft bill on placement agencies" *Times of India*, New Delhi, Apr. 29, 2013, available at: <http://timesofindia.indiatimes.com/city/delhi/Delhi-govt-drags-its-feet-on-draft-bill-on-placement-agencies/articleshow/19773310.cms?referral=PM> (last visited on Mar. 2, 2015).

56 Available at: http://www.delhi.gov.in/wps/wcm/connect/b3eab0004_babd04290a7954683034d7b/PlacementAgencyBill.pdf?MOD=AJPERES&mod=64054297 (last visited on Mar. 2, 2014).

57 Available at: http://www.delhi.gov.in/wps/wcm/connect/doi_labour/Labour/Home/ (last visited on Mar. 2, 2015).

for the regulation of placement agencies involved in trafficking of women and children. The draft has also taken cognisance of some protection to workers under the UN Protocol on Human Trafficking has been ratified by India in May 2011.⁵⁸

The provisions of the draft stipulate that the registration for the individuals or private agencies for employing domestic workers and maintenance of records of domestic workers and employers in a register is mandatory. The licenses under the draft, subject to some conditions, will be issued by the office of the labour commissioner for a period of five years. The labour department has been empowered to inspect and confirm the veracity of the records held by the recruiting agencies. The recruiting agencies have to issue photo identity documents to workers and inform the controlling authority under the bill, about employment of workers within five days of their employment. It is incumbent upon domestic workers, to ensure payment of legitimate remuneration to such work force in Delhi NCR, to have a bank account for payment of remuneration.⁵⁹

According to the draft, all existing placement agencies are required to register with the state within three months from the date of notification in the official gazette. The draft further provides that no agency shall employ, engage or deploy anyone under the age of 18 as a domestic worker. Violation of the said proposed law can fetch a jail term up to one year and a fine of Rs 20,000.⁶⁰

A critique of the Bill

It has been highlighted that the draft does not declare the duties of the employer towards the domestic worker or the rights of the domestic worker at the work place. The document does not provide for the social security scheme for the domestic worker and the liability of the placement agency to ensure the implementation of protection. There is no mechanism provided whereby a domestic worker can lodge complaint of sexual harassment against placement agents. This is also important because as per the draft the placement agency will have complete control over the domestic worker which will lead to exploitation.⁶¹

58 India has signed The United Nations Convention against Transnational Organised Crime (UNTOC), 2000 and its three protocols. The convention came into force in 2003, *available at*: <https://www.unodc.org/southasia//frontpage/2011/may/indian-govt-ratifies-two-un-conventions.html> (last visited on Mar. 2, 2015).

59 *Supra* note 51.

60 *Ibid.*

61 Shakti Vahini, "The Delhi Private Placement Agency (Regulation) Bill of 2012", *available at*: <http://shaktivahini.org/shakti-vahini-2/shakti-vahini-comments-on-the-delhi-private-placement-agencies-regulation-bill-2012> (last visited on Mar. 1, 2015).

The draft does not specify whether the registration in Delhi will entitle the placement agency to recruit persons from the source states. The draft requires that a worker must satisfy the agency about his character and antecedents. This clause will be misused by placement agency as most of the domestic workers who are brought from the source areas continue to remain in bonded and trafficked condition. The character certificate will be procured by the placement agencies and it will become a tool for exploitation.⁶²

Implementing such a law in the Delhi NCR area, will not make much difference in the living and working conditions of the beneficiaries nationwide. This is because most of the domestic workers are being transported from other states like West Bengal, Bihar, Chhattisgarh and Jharkhand. To ensure coordination between states, it is significant to put in place a national plan of action for placement agencies. The registration in Delhi without a monitoring mechanism in source areas will lead to increased vulnerability of women and children in the region.

VI Migrant domestic worker's protection under the social security agreements

It is pertinent to mention that the NCW draft of 2010 and Delhi draft Bill of 2012 are not extended to domestic workers employed outside India. Issues pertaining to protection of migrant domestic workers outside India are regulated by the agreements based on the instruments of the UN and ILO. The ILO Convention No. 97, 143, 189 and the UN Convention of 1990 on protection to migrant workers and their families members, have suggested that member nations may enter into any agreements with recruiting states for the provisions of such social security protection, recruitments, placement, *etc.*

India has created eight social security agreements (hereinafter, SSAs) with Belgium, Germany, Switzerland, Denmark, Luxembourg, France, South Korea and the Netherlands for the purpose of social security protection to Indian workers employed in those countries.⁶³ It is seen that the SSAs are bilateral mechanisms to guard the social security interests of workers working in another country. Being a reciprocal arrangement, it generally provides for equality of treatment and avoidance of double coverage. Generally the SSA applies to employees sent on posting in another country, provided they are complying

⁶² *Ibid.*

⁶³ Available at: <http://epfindia.nic.in/IntWorkersNew/IntWorkersNew.html> (last visited on Mar. 2, 2015).

under the social security system of the home country. It also provides for stipulation of payment of pensionary benefits, directly without any reduction, to the beneficiary choosing to reside in the territory of the home country and also to a beneficiary choosing to reside in the territory of a third country. Further the period of service rendered by an employee in a foreign country is counted for determining the eligibility for benefits, but the quantum of payment is limited to the length of service, on pro-rata basis.⁶⁴

The SSAs desire to achieve equality on the principles of mutuality and are scheduled to benefit the employees and employers of the parties to the arrangements. Most of these agreements provide for benefits of old age or survivors' benefits and permanent total disability pension. In consonance with these SSAs, India has inserted appropriate amendments under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

It is also pertinent to mention that the scope of most of SSAs, to which India is one of the signatories, is limited to old age pension or survivor's pension and permanent total disability insurance only. It is important to mention that the SSA with the Netherlands covers additional social security protection benefits in the form of maternity benefits, unemployment benefits, and children allowances. Social security protection such as minimum rate of wages, employment injury, maternity benefits, and other welfare measures like housing facilities, recreational facilities, medical facilities, and working conditions, are beyond the scope of these SSAs. It is felt that the jurisdiction and amplitude of the SSAs are required to be enhanced to cover the Indian migrant workers against any exploitation at the hands of employers in the host countries.

It is very difficult to discover the effectiveness of these SSAs and whether the parties to these SSAs have been able to provide any protection to workers in their respective countries or not. This is a matter of further research. It is also observed that India has not signed any SSA or memorandum of understanding with the specific countries, such as the UAE, Kuwait, Oman, South Arabia, the US, UK and Canada, where majority of migrant workers are employed.⁶⁵

VII Challenges for human rights of domestic workers in the era of globalisation and commercialisation

The domestic workers are recognised as servants or maids by their so called masters, leading to feelings of lack of self-confidence and inferiority. Such below dignity approach and living and working conditions of these workers have led to extensive dishonor perpetrated upon domestic workers

⁶⁴ *Ibid.*

⁶⁵ Available at: <http://laborsta.ilo.org/STP/guest> (last visited on Mar. 12, 2015).

and their work. It is important to unearth that the terms and conditions of employment contract of domestic workers are drafted in such a way that it enhances the scope of exploitation by employers. The classification of such workers into documented (legally employed, with proper authorized documents) and undocumented (illegally employed, without any authorized documents) domestic workers is important for the purpose of extending protection.

It has been reported that the undocumented domestic workers face much bigger challenges than the documented work force. Undocumented domestic workers lack strong bargaining capacity, resulting in exploitation at the hands of employer, for better wages or working conditions, and live in fear that their irregular status will be exposed. Consequently, undocumented domestic workers receive lower wages and encounter worse living and working conditions. Undocumented domestic workers also face more severe pecuniary hardships than other workers.

Living and working conditions of skilled workers are better as compared to manual workers such as domestic workers. This is due to the fact that there is a wide gap between demand and supply of unskilled workers. Bargaining capacity of manual workers such as domestic work force, against their employers, is not as sound as compared to skilled workers.

Migrant domestic workers are not treated at par with native domestic workers in respect of remuneration, social security protection and workers welfare. Guaranteed minimum rate of wages, which is considered a fundamental right by the UN and the ILO, is not paid to migrant domestic workers.

No respect for human rights of domestic workers

It has also been noticed that living and working conditions of domestic workers are pathetic all over the world. Like an ordinary human being, a domestic worker is entitled to all the human rights, like equality, life with dignity, social security, right to freedom of expression, associations, and profession, protection against exploitation, health and safety protection of workers, and labour welfare measures, under municipal law and international instruments.⁶⁶ Lack of enforcement of the international instruments and municipal laws on the subject negates the existence of some vital human rights to domestic workers.

⁶⁶ The Universal Declaration of Human Rights, 1948; Convention on the Elimination of All Forms of Racial Discrimination, 1965; Covenant on Civil and Political Rights, 1966; Covenant on Economic, Social and Cultural Rights, 1966; Convention Concerning Decent Work for Domestic Workers, 2011 and Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 2000 and Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live, 1985.

Many instances of gross violation of human rights of a domestic worker at the hands of employers have been reported in the media. In one such instance a female migrant domestic worker, who was engaged in the middle-east, was repeatedly raped by the son of the employer, dared to complain about this instance to the employer. No action was taken by the employer. She was not in a position to lodge a complaint before the police. She was compelled by the circumstances to kill the employer, his wife and his son. Later she was beheaded for committing murder.⁶⁷

Sexual harassment of domestic workers at workplace

The most severe forms of abuse faced by female domestic workers include sexual, psychological and physical abuse, including violence, food deprivation and confinement. The ILO Convention No. 189 explicitly calls for the effective protection of domestic workers against such conducts.⁶⁸ It is observed that few countries have provided for the protection against sexual harassment at workplace. In New York, the Domestic Workers Bill of Rights, 2010,⁶⁹ recognising the employment rights protection deficit for these workers, announced certain protections in the form of protection from sexual harassment and harassment based on gender, race, national origin and religion. In Singapore, the Employment of Foreign Manpower (Work Passes) Regulations, 2012,⁷⁰ emphasises the compliance of conditions of employment to be complied with by employers of foreign domestic workers.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁷¹ has included domestic workers within its ambit of

67 UN Report on Stories of Women Migrant Workers, *available at* <http://www.unwomen-eseasia.org/projects/migrant/02stories.pdf> (last visited on Feb. 12, 2015).

68 Recommendation No. 201 provides guidance on action that might be taken, including in terms of legislation and its enforcement at paras 7, 21 and 24.

69 The Domestic Workers Bill of Rights 2010, s. 296-B.

70 Employment of Foreign Manpower (Work Passes) Regulations, 2012. Reg. 10 reads:
The employer shall not ill-treat the foreign employee, and shall not cause or knowingly permit the foreign employee to be ill-treated by any other person. A foreign employee is ill-treated if:
(a) the foreign employee is subjected to physical or sexual abuse, or to criminal intimidation;
(b) the employer or other person does, or causes the foreign employee to do, any act which causes or is likely to cause injury to the health or safety of the foreign employee;
(c) the employer or other person neglects or abandons the foreign employee in circumstances which cause or are likely to cause injury to the health or safety of the foreign employee;
or
(d) the employer or other person commits an act detrimental to the welfare of the foreign employee.

71 *Available at* <http://wcd.nic.in/wcdact/womenactsex.pdf> (last visited on Feb. 27, 2015).

protection. Under the Act, for the purpose of redressal of grievances, an employer is under obligation to constitute, an internal complaints committee (ICC), which shall be composed of a woman senior employee, two other employees, and a social worker. In case the ICC is not constituted or grievances are against employer, then the complaints can be filed before the district committee headed by the district magistrate. It is not quite practicable for an employer employing a domestic worker to constitute the ICC consisting of some specified people under the Act. There is no protection to a domestic worker in case of filing of any grievance against her employer.

In the middle east countries such as Kuwait, Qatar, Oman, Saudi Arabia, the UAE and Yemen, there is a dearth of protecting by-laws for the protection of domestic work force. Migrant domestic workers are often subject to harsh, verbal and physical maltreatment. They face racial prejudice in the country where they work and are forced with very restrictive cultural norms such as the purdah system, restrictions on movement outside the place of employment.⁷²

Pathetic living and working conditions of domestic workers

The living and working conditions of undocumented migrant workers are more pathetic as compared to documented migrant workers.⁷³ Spanish news media has summarized the living and working conditions of undocumented African migrant workers in a town of Spain in the following expression:⁷⁴

Migrant workers from Africa living in shacks made of old boxes and plastic sheeting, without sanitation or access to drinking water. Wages are routinely less than half the legal minimum wage. Workers without papers being told they will be reported to the police if they complain. Allegations of segregation enforced by police harassment when African workers stray outside the hothouse areas into tourist areas.

Working hours of domestic workers may range between 12 and 20 hours per day. Various legitimate claims such as wages, leave facilities, medical benefits and rest time, are dependent upon the whims and fancies of employers. Due to little control over their working conditions and absence of formal contract of employment, domestic workers

72 Bhartiya Majdoor Sangh, India, Decent Work for Domestic Workers, *available at*: <http://www.Bms.Org.In/Encyc/2012/7/23/Decent-Work-For-Domestic-Workers> (last visited on Mar. 31, 2015).

73 A video of conditions of constructions workers in East Asian countries, *available at*: <http://www.youtube.com/watch?v=rGENsBHqphk&NR=1&feature=endscreen> (last visited on Mar. 1, 2015).

74 *Ibid.*

have always been sufferers of distrust. If anything is missing in the house, they are the first to be accused with threats, physical violence, police conviction and even dismissal.⁷⁵ Domestic workers in the middle-east, without any recognition of any human right, have been treated like animals.⁷⁶ In Saudi Arabia, one employer and his wife skewered the body of a migrant domestic worker with at least 24 nails and needles.⁷⁷

Working hours for a day or week for domestic workers under domestic legislations

The ILO Forty-Hour Week Convention, 1935⁷⁸ has introduced the limit of 40 hours per week, which was endorsed by the Convention of Reduction of Hours of Work Recommendation, 1962,⁷⁹ as a social standard to be reached in stages, if necessary. In an analogous essence, article 24 of the Universal Declaration of Human Rights recognizes that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.⁸⁰ “The Domestic Workers Recommendation, 2011,⁸¹ gives some guidance on how this determination could be made, recommending that working hours should be recorded and that governments should regulate various aspects (*e.g.*, quantity and remuneration) of stand-by periods, night working, daily and weekly rest and paid annual leave”.⁸²

On the basis of data collected and examined by the ILO in 2013,⁸³ 20.9 million domestic workers (about 39.7 percent of the total domestic work force) are permitted to some limitation of their normal weekly hours as compared to other workers. Further, around 1.9 million (3.6 percent) have some limitation of normal weekly hours, although on less favourable terms than other workers. It is also observed that no upper limit exists on normal weekly hours in national legislation for more than half (29.7 million

75 ILO Report on Data Collection on Wages and Income of Domestic Workers 2010, vindicates the observations of the researcher, *available at*: <http://www.ilo.org/travail/areasofwork/wages-and-income/lang—en/index.htm> (last visited on Apr. 24, 2015).

76 “Maids in the Middle East: Little better than slavery” *Economist*, Sep. 2, 2010, *available at*: <http://www.economist.com/node/16953469> (last visited on July 20, 2015). See also, a video on the same issue *available at*: http://article.wn.com/view/2012/07/04/Kuwait_unsafe_for_migrant_women_workers/ (last visited on Mar. 2, 2015).

77 *Ibid.*

78 ILO Convention No. 47.

79 ILO Convention No. 116.

80 *Supra* note 1, ch. 5 at 61.

81 ILO’s Recommendation no. 201.

82 *Supra* note 1.

83 *Supra* note 1 and 3.

total domestic workers, or 56.6 percent) of the world's domestic workers population. "This low level of working time protection is primarily caused by the exclusion of domestic workers from existing national standards on normal hours at work. Only in a minority of cases is it due to the absence of any standard on weekly working hours for all types of workers. At a regional level, the coverage is weakest in Asia and the Middle East, where as statutory limitations on the normal weekly working time of domestic workers are almost universally absent."⁸⁴

Weekly rest for domestic workers under domestic legislations

According to the ILO conventions such as the Weekly Rest (Industry) Convention, 1921 and the Weekly Rest (Commerce and Offices) Convention 1957, workers are entitled to at least 24 consecutive hours of rest per week. Sufficient relaxation periods and sleep have substantial effects on a worker's mental and physical health and work performance. The necessity of weekly rest under municipal laws has also been reiterated by the Domestic Workers Convention, 2011.

Bye-laws of many countries have already provided domestic workers with the provision of weekly rest. For instance, the labour legislations in both Uruguay and South Africa originate an uninterrupted weekly rest period of 36 hours for domestic workers. In Uruguay, the specified weekly rest period includes the whole day on Sunday, while in South Africa it may be converted, by agreement, to a minimum of 60 consecutive hours every second week.⁸⁵

Data of the ILO report reflects that across the world about half (49.0 percent of the total domestic workers) of all domestic workers, or 25.7 million are entitled to a weekly rest period of at least 24 consecutive hours.⁸⁶ It is also surprising to note that there is still a huge gap in the statutory provision of weekly rest periods. Because 44.9 per cent of all domestic work force are beyond the scope of any weekly rest under national legislations. Most of the domestic workers which have been employed in Asia and the middle east are not given any weekly holiday.⁸⁷ A small portion of domestic workers engaged in both regions, such as Iran and Jordan, are entitled to a weekly day of rest under national legislations. In Singapore,

84 *Ibid.*

85 Uruguay's Law No. 18,065: Domestic work, 2006 regulates the working condition of domestic workers, *available at*: <http://www.parlamento.gub.uy/leyes/ley18065.htm> (last visited on 27 May, 2017); The Basic Conditions of Employment Act, 1997, part VII, sectoral determination deals with the protections for domestic workers, *available at*: http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=74071 (last visited on Feb. 27, 2015).

86 *Supra* note 1.

87 *Supra* note 1, ch. 5.

foreign domestic workers are entitled to a weekly rest day under work permits issued or renewed from January 2013 onwards.⁸⁸ It is also observed that protection is generally good in the developed countries, Africa and Latin America.⁸⁹

Annual leave for domestic workers under domestic legislations

The issue of annual leave acquires particular importance for migrant domestic workers who have family members in their country of origin, and so depend on their paid holidays to be able to reunite with them. The Holidays with Pay Convention (Revised), 1970,⁹⁰ establishes the right to annual paid leave of a minimum of three weeks per year. This convention applies to all employed persons including those employed by private households⁹¹ and virtually all countries have a universal statutory minimum entitlement to paid annual leave. The Domestic Workers Convention, 2011⁹² also provides for annual leave at the prescribed rate to domestic workers.

According to the domestic workers report 2013 of the ILO, several states have already extended the benefits of paid annual leave to domestic workers in their respective nations. In Spain, domestic workers have the right to 30 days of annual paid leave, of which at least 15 must be consecutive.⁹³ In Zambia, the labour legislation entitles domestic workers to accrue not less than two days of paid leave per month.⁹⁴ Whereas in Mozambique the entitlement to annual leave for domestic workers is made according to 12 days of paid holidays during the first year, 24 days during the second, and 30 days per year from the third year onwards.⁹⁵

Domestic workers across the world, get equal entitlements to annual leave. Around 23.3 million workers, who are mostly employed in Asia and the middle-east, are not entitled to any benefits of annual leave due to the lack of domestic legislations and lack of enforcement of labour laws. In the case of “*No Annual Leave Category*” leave arrangements largely depend upon the discretion of the employer and holidays are often only granted for national festivals.⁹⁶

88 Ministry of Manpower, Singapore, *available at*: <http://www.mom.gov.sg/newsroom/press-releases/2012/weekly-rest-days-for-foreign-domestic-workers> (last visited on Jan. 12, 2015).

89 *Supra* note 1, ch. 5.

90 ILO Convention No. 132.

91 Convention No. 132 applies to all employed persons, with the exception of seafarers, whose paid leave is regulated by the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146).

92 ILO Convention No. 189.

93 Royal Decree 1620/2011 of 14 Nov. 2011, art. 9(2).

94 The Minimum Wages and Conditions of Employment (Domestic Workers) Order, 2011, para 8.

95 Decree No. 40/2008 of 26 Nov. 2008, *Regulamento de Trabalho Doméstico*, art. 22.

96 *Supra* note 1, ch. 5 at 65.

Lack of social security protections and welfare measures for domestic workers

The report of the Channel 4 of UK reveals that “Domestic Migrant workers work up to twenty hours a day for little pay in one of the nation in the Europe. Around fifteen thousand migrant workers are living as slaves, being abused sexually, physically and psychologically by employers”.⁹⁷ The investigation report has narrated the real life of a domestic worker in one of the nations in the Europe. One female domestic worker from west Africa, whose former employer was a solicitor, used to work 120 hours a week for little money during the stay of three years with him. She was treated like a slave. A neighbour helped her escape from the wrongful confinement by her employer.⁹⁸ This paper is inclined to delve into some of the facets of social security protection for domestic works in the form of minimum wages and maternity benefits.

Minimum rates of wages for domestic workers under domestic laws

Guaranteed minimum rates of wages is a classic tool for overcoming irregularities in bargaining power. The Minimum Wage Fixing Convention, 1970 and the Domestic Workers Convention, 2011⁹⁹ unambiguously endorse minimum wage coverage for domestic workers. Indian Constitution under article 23 provides for guaranteed minimum rate of wages to all workers. If minimum rate wage is not paid then it would amount to begar (bonded labour) resulting in violation of article 23 of the Constitution. The Minimum Wages Act, 1948 has been implemented to enshrine the value of article 23, but unfortunately the said Act is hardly made available to domestic workers by some state governments in India.

The data in the DW Report, 2013 has also depicted that more than half of all domestic workers enjoy minimum wage coverage under one of the various mechanisms. Some 26.9 million domestic workers (51.3 percent)¹⁰⁰ are entitled to a minimum wage on par with that applicable to other groups of workers. Unfortunately around 22.4 million domestic workers are not entitled to any guaranteed minimum wages due lack of municipal legislations. And around 3.1 million (5.9 percent) of the total domestic workers get lesser payment as compared to other workers.¹⁰¹

97 Amelia Hill, “Many migrant workers in UK are modern day slaves” *The Guardian*, Aug. 30, 2010, available at: <http://www.guardian.co.uk/uk/2010/aug/30/migrant-workers-modern-day-slavery> (last visited on Jan. 20, 2015).

98 *Ibid.*

99 ILO Convention No. 189.

100 *Supra* note 1, ch. 6 at 78.

101 *Ibid.*

Maternity leave for domestic workers under domestic laws

The Maternity Protection Convention (Revised), 1952¹⁰² explicitly provides the domestic workers with maternity benefits.¹⁰³ The Maternity Protection Convention, 2000¹⁰⁴ also applies to all employed women, including those in typical forms of dependent work.¹⁰⁵ The Domestic Workers Convention, 2011, is not far behind to take cognizance of necessary maternity benefits for domestic workers.¹⁰⁶ It has also been observed by the DW Report, 2013 that more than 83 percent of the total domestic work force is composed of female workers. Therefore, it is necessary to provide some fundamental maternity benefits such as paid maternity leave along with medical bonus, *etc.*, for at least two children under all domestic laws. The availability of the benefits of maternity leave is a key worry in the domestic work sector. Less than two-thirds (27.6 million) of all female domestic workers as compared to other workers, are entitled to maternity leave under national legislations. But 15.6 million or 35.6 per cent of the total work force engaged in domestic work sector in the Asia and the middle-east region, has been denied the right of maternity benefits. “This lack of coverage is due to the exclusion of domestic workers from existing provisions that establish the right to maternity leave for other types of workers, which are almost universally in place.”¹⁰⁷

Non availability of any benefit to domestic workers under municipal laws

According to the DW Report 2013, domestic workers, about 29.9 percent (15.7 million), are completely excluded from the scope of national labour laws¹⁰⁸ for the purpose of good living and working conditions and fundamental social security benefits. It has happened due to the fact that majority of countries in Asia and the middle-east have ignored the contributions and necessity of protection to domestic work force.

Moreover it is observed from the data available that Asia and middle-east are the two regions where domestic workers are least protected. In Asia and the middle-east

102 ILO Convention No. 103.

103 *Id.*, art. 3 (h).

104 ILO Convention No. 183.

105 *Id.*, art. 2(1) has two key aims: *first*, to ensure that work does not threaten the health of women and their new-born during pregnancy and nursing, and *second*, that maternity and women’s reproductive roles do not jeopardize their economic security. The convention defines the five core elements of maternity protection at work, namely: maternity leave; cash and medical benefits; employment protection and non-discrimination; health protection; and breastfeeding arrangements at the workplace.

106 *Supra* note 23, art. 14.

107 *Supra* note 1, ch. 7 at 87.

108 *Supra* note 1, chs. 5, 6 and 7.

more than 90 percent domestic workers are not covered under the fundamental rights such as right to take maternity leave, maternity bonus, minimum wages, weekly rest, reasonable working hours and annual leave.¹⁰⁹ In case of developed countries, the share of domestic workers to avail the right to annual leave is on the same terms as other workers, which ranges between 55 -71 percent. In Africa, where 57 percent of domestic workers have the same entitlement, another 42 percent are guaranteed a period of paid annual leave, albeit shorter than for other workers.¹¹⁰

After examining and analyzing the existing ground reality across the globe, it has been observed that a migrant domestic worker is retained in service till the time he/she is fit to serve. The moment he/she becomes disabled due to occupational injury or otherwise, he/she is thrown out of employment without making payment of any compensation/remuneration. There is no social security protection in the form compensation in case of occupational injury to worker, compensation to dependents on death, maternity benefits, and pensioners' benefits, available to domestic workers. Welfare measures, such as good housing facilities and recreational activities for majority of domestic workers across the world, are a distant dream.

Lack of bargaining capacity and challenges arising out of grievances

Nature of employment of domestic workers and prevailing social, economic and political conditions restrain domestic workers to form any trade union or association of domestic workers. Due to lack of association their bargaining capacity for better terms and conditions of employment is also reduced. Therefore domestic workers are not in a position to bargain for better living and working conditions from employers. A strong workers' association can certainly minimise exploitation and promote interests of these workers. It is evident from the instance of Myanmar's migrant workers employed in Thailand, who formed a workers association in Thailand, and compelled their employers to improve their working conditions, and increase the rate of wages. This was made possible due to collective efforts of declaring a two-day wildcat strike.¹¹¹

Another reason for exploitation is the lack of communication skills of domestic workers outside India. Domestic workers may not be conversant with the language of host country. It would be very difficult for such person to approach, in case of any grievances, any state agency against his employer. Even if they know the

109 *Ibid*

110 *Ibid*.

111 Stephen Campbell, "Solidarity Formations Under Flexibilisation: Workplace Struggles of Precarious Migrants in Thailand", *available at*: <https://escarpmentpress.org/global labour/article/viewFile/1135/1191> (last visited on May 21, 2015).

process for filing their grievances, they would be restrained to file any complaint against their employers for the simple reason of losing employment.

VIII Conclusion

Generally, domestic workers are engaged for household tasks such as cooking, cleaning, washing, ironing, marketing, running errands, childcare, care of the aged or disabled, *etc.* However, domestic work may also include gardening, chauffeuring or providing security services, tasks more often performed by men. Generally domestic workers are employed on part time or full time basis without any formal or express agreement of employment. The ILO, the UN and other international and national agencies have been trying to ensure implementation of various international instruments under the domestic laws. This has yielded unsatisfactory results, which is evident from the number of ratifications of international instruments and instances of exploitation of domestic workers.

In order to minimize grievances of migrant workers including domestic workers, all the connected conventions of the ILO should be included within the ambit of core labour standards of the ILO. Core labour standards contain eight fundamental labour standards to protect workers all over the world. Member nations have recognised the importance and seriousness of core labour standards and this is the only justification for high rates of ratification of these standards.¹¹² It is evident from the fact that only 47 members out of 185 members have ratified convention no. 97 and 143 of the ILO. The important convention of 189 has been ratified by 12 member nations only. Out of these 12 ratifications only five members have brought it into force and the others have not made any attempt to notify it for enforcement. Moreover, major developed countries and other nations where

112 Rate of ratification of core labour standards is quite high as compare to conventions on migrant workers, *available at*: <http://www.ilo.org/dyn/normlex/en/?p=1000:12001:0::NO>: (last visited on May 9, 2015). There are eight core labour standards:

- a. Forced Labour Convention, 1930 (No. 29).
- b. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).
- c. Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
- d. Equal Remuneration Convention, 1951 (No. 100).
- e. Abolition of Forced Labour Convention, 1957 (No. 105).
- f. Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- g. Minimum Age Convention, 1973 (No. 138).
- h. Worst Forms of Child Labour Convention, 1999 (No. 182).

most of Indian domestic migrant workers have been employed, have not ratified any convention related to the protection of domestic workers.

Whereas in the case of core labour standards, comprising of eight fundamental conventions, member states ranging from 152 to 178 members in the case of each convention, have ratified most of the core labour standards and municipal laws shows the commitment of members towards these core conventions.¹¹³ It is also recommended that the member nations should ratify all conventions pertaining to protection of migrant workers by incorporating these protections in the municipal laws. Moreover to provide protection against discrimination in the case of wages, social security protections, welfare measures, and working conditions of domestic workers, India should also enter into SSAs with selective countries, where majority of the Indian migrant workers are working. Therefore India should enter into more SSAs, with countries in the middle-east, the US, the UK and Asian countries, where a large force of migrant domestic workers have been employed.

It is suggested that India should establish and revise memorandum of understanding, multilateral or bilateral agreements, including prohibition of holding of documents of domestic workers by recruitment agency or employer, with the countries where large numbers of Indian migrant workers, especially manual or un-skilled workers, are employed. Such agreements should not be confined to statute books but must be implemented in letter and spirit. Sincere commitment to the compliances of social security agreements can certainly reduce the chances of exploitation of such work force.

Although protection related to domestic workers is confined to some major issues pertaining to working conditions, remuneration, social security protection, and welfare measures which must be provided by the employer to all domestic workers, whether inside or outside India, without any discrimination to migrant workers, workers cannot claim these protections unless they are informed about such rights. Sensitization of migrant workers of their rights and liability of employers and capability of enforcing their human rights in case of violation should be given top priority in the campaign for protecting domestic workers. Formulation of association of domestic workers will certainly enhance their bargaining capacity and protect them from exploitation.

India has enacted around a 100 labour laws including subordinate legislations, to provide protection to workers on social security, labour welfare, minimum wages, bonus, safety and other retirement benefits. Majority of these labour legislations have failed to secure and ensure effective and efficient enforcement of

113 Ratification of Fundamental and Governance Conventions of the ILO, *available at* <http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:1:0::NO> (last visited on Mar. 9, 2015).

labour laws, especially laws related to unorganised sector which also includes domestic workers. Therefore the need of hour is to fix the public accountability of public servants for the failure of enforcement mechanism for enforcing protection to domestic workers under the relevant labour laws in India.

There have been many attempts to regulate the living and working conditions of domestic workers in India. The legislative initiatives include the Domestic Workers (Conditions of Service) Bill 1959, All India Domestic Servants Bill 1959, Domestic Workers (Conditions of Service), Bill 1972 & 1977, and the House Workers (Conditions of Service) Bill, 1989. A private member's bill on the Housemaids and Domestic Servants (Conditions of Service and Welfare) Bill, 2004, was introduced by Shrimati Prema Cariappa on December 3, 2004.¹¹⁴ The said bill aimed at providing for the conditions of service, such as minimum wages, holidays, hours of work, and other living and working conditions for the housemaids and domestic servants so as to eliminate their exploitation by their employers and for the welfare measures to be undertaken by their employers and the state and for matters connected therewith and incidental thereto.¹¹⁵ Due to various social, economic and political reasons these bills could not get through the Parliament.

Since the subject matter of domestic workers falls within the jurisdiction of the states, the Central Government, in order to ensure uniformity and equal protection to domestic workers in various states, should frame a national model law.

The model draft of 2010 framed by the NCW for the protection of domestic workers against any kind of exploitation including human trafficking for domestic work at the hands of employers and recruiting agencies, after the changes suggested in the paper, may be considered as a national model law for the state governments to frame uniform enactments for the protection of domestic workers. The proposed national model law is almost in compliance with the ILO Convention No. 189 on domestic workers and is capable of promoting the interests of domestic workers.

The subsistence of human dignity is more precious than any kind of profit at the cost of human beings and it is the duty of the state to protect and promote human rights of each and every citizen. Therefore, the state governments should ensure the strict compliance of such model law for the protection of domestic migrant workers.

*Jeet Singh Mann**

114 *Available at:* http://previous.wiego.org/informal_economy_law/india/content/dm_housemaids_bill_2004.pdf (last visited on Mar. 14 (2015).

115 *Ibid.*

* Associate Professor, National Law University, Delhi. Email: jeetsinghmann007@gmail.com.