

‘CONVENTION ON DECENT WORK FOR DOMESTIC WORKERS’ AS AN ‘UMBRELLA LEGISLATION’ FOR PROTECTION OF DOMESTIC WORKERS: A CONVENTION WHICH INDIA SHOULD RATIFY

“The Convention and Recommendation have effectively started to play their role as catalysts for change.”

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Abstract

In the contemporary era of globalisation, economic growth of nation is of tremendous significance. Economic growth, however, is not the result of a single individual’s effort rather it is a collective term. Domestic workers also contribute to the economy of nation as a background player by relieving those in homes in performance of domestic chores and reducing their burden, so that they can go outside to work and earn. And thus, indirectly contribute to the nation’s economy. Though on the other hand domestic workers themselves do not even get recognition, neither of their work nor of their status. To solve the problems of domestic workers a Convention has been designed on Decent Work. It ensures a bundle of rights for domestic workers. India has not yet ratified it. This paper thus, tries to provide an impetus on such Convention and recommend that it be ratified with necessary modifications, if any.

I Introduction

WITH THE passage of time and arrival of urbanisation, domestic work has evolved as an area of employment in built-up areas.² This sector is dominated by female workers, since Indian society is still patriarchal in nature and believe that household chores are meant to be performed by women. Such household chores, till done by any member of the house for each other, is termed as unpaid domestic work. But, at the same time, when the same work is done by someone other than the member of the house, in the form of employment, for certain remuneration, it is turned into paid domestic work. The worker who is engaged in this paid domestic work is called as domestic worker.

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- 1 Director, Working Conditions and Equality Department, *Convention 189 – Landmark Treaty for domestic workers comes into force*, International Labour Organisation, Press Release, Sep. 5, 2013, available at: https://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_220793/lang—en/index.htm. (last visited on on July 10, 2022)
 - 2 Director General Labour Welfare, “Final Report of the Task Force on domestic Workers – Realising Decent Work” 3 (Government of India, Sep. 12, 2011).

This form of work is not a new concept in India, since similar concept was prevalent from time immemorial in the form of slavery and *das* or *dasi* system. However, this form has been quite modified with time. And at present, it would not be right to say domestic worker as slave, *das* or *dasi*. They may, on the other hand be called as workers working in the informal sector. But, at this point of time, a question appears, as to, do these household workers enjoy the similar benefit which other category of workers does in sector. Whether domestic workers are given status of workers under the labour jurisprudence? Is there any legislative protection offered to domestic workers in India? These questions are still waiting for their answer.

From above discussion, it becomes clear that, requirement of time is a statute or legal document to ensure protection to these domestic workers. And fortunately, there is a Convention drafted for the said purpose by the International Labour Organisation (ILO), namely “the ILO Convention No.189” (herein after referred to as “the Convention”). This Convention is accompanied with the supplementary “Recommendation No.201” (herein after referred to as “the Recommendation”). India, being a member of this organisation has signed the document but has unfortunately not ratified the same.

As such, through this paper, an attempt has been made to raise voice in favour of such ratification. Provisions of this Convention has been defined in brief to clarify the concept and making the stand clear in favour of such ratification.

The main objective behind this paper is:

- i. to describe the conditions of work of workers engaged in domestic work sector in India
- ii. to describe the level of protection and safeguard in the form of piece of any statute available for domestic workers in India
- iii. to explain role of ILO in providing a catena of conventions for upholding socio-economic development in its member states by protecting workers from exploitation
- iv. to emphasize the very objective underlying the Convention.
- v. and finally, to examine as to whether the said convention be ratified by India.

II Understanding the concept of ‘Domestic Work’ and ‘Domestic Worker’: Undervalued, underpaid and unregulated work

When one talks about the term ‘domestic worker’, an image appears in one’s mind of a female worker who is performing household chores in the house of the employer. This imaginary definition, to some extent is true. But this is not a complete definition of domestic worker, since the condition of work, their wages, and other related aspects

are not covered in it. As such, it becomes necessary to have a clear definition of the term 'domestic worker'.

As per the said Convention, the term "domestic worker" has been defined under article 1³ as "any person who is engaged in domestic work and the said work is done within the employment relationship, and the term domestic work means work performed by the worker in or for a household or households of employer. Provided that a person shall not be called as a domestic worker who works as a domestic worker only occasionally and not as an occupation."

It has further been provided by the Convention that domestic worker may be either live-in domestic workers, that is those who live within the household as members of the household or live-out domestic workers who perform the household chores within the employment relationship but do not reside in the employer's house. However, it clarifies that members of employer's family engaged in similar task are excluded and as such they do not come under this definition of domestic worker. It also contemplates that person performing domestic work on a casual basis are also not covered under this definition.

So far as definition in Indian Legislation is concerned, there is no statutory definition formulated for this category of workers. Though, in some legislations, these workers are included as wage workers. For instance, as per the provisions of the Act of 2013, a 'domestic worker' means - "*a woman who is employed to do the household work in any household for remuneration whether in cash or in kind, either directly or through any agency on a temporary, permanent, part time or full-time basis, but does not include any member of the family of the employer.*"⁴

Under, "the Unorganised Workers Social Security Act, 2008", the word "domestic worker" is somehow described in the context of "wage worker" as:⁵

A person who is employed in the unorganised sector for remuneration, either directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether the remuneration is in cash or in kind, whether as home based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of amount as may be notified by the Central Government and State Government as the case may be.

3 ILO Convention on Domestic Workers, 2011 (No. 189).

4 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act no. of 2013), s.2(e).

5 s.2(n). (*Said statute now stands Repealed and is replaced by "the Code on Social Security, 2020 (Act No. 36 of 2020)"*).

In India, the term domestic worker has been defined not specifically but as a worker who is employed in the unorganised sector for remuneration. No particular definition implies specific legal protection for this category of workers.

Thus, from the above discussion, it can be said that, in the absence of specific definition, these workers have to wait long for any legal protection specifically designed for them.

III Conditions of Work: Life full of agony

In the patriarchal Indian society, domestic work is a female dominated sector. And being a female dominated sector, it is poorly regulated and is unguarded by labour legislation. Thus, apart from being part of labour workforce, these workers are not even considered as workers. Lack of recognition as worker in terms of legal provisions, makes this category of unorganised sector workers more vulnerable to exploitation. As such these workers are left to encounter a bundle of problems which includes harassment and abusive behaviour of employer.⁶

Terms of employment or labour conditions of domestic workers in India includes, lack of decent wages and work conditions, dearth of skill enhancement program giving rise to joblessness and no expansion and growth in employment opportunities, no weekly leave, exploitation and abuse by traffickers/placement agencies, no fixed or defined time of work (in case of live-in domestic workers), no fixed wages, forced migration, lack of welfare or social security programs, abuse and sexual harassment.⁷ These traits shows the miserable and poor environment of work of domestic worker.⁸

Thus, domestic workers have to suffer a lot and work in pathetic conditions in the absence of any legal protection available for them.

Absence of national legal protection for domestic workers in India

Till now, in India, there exists no legislation that serves to protect the interests of household workers. Though attempt has been made, from time to time, but none of them found success.

Since 1959, attempt has been made, from time to time, to have a legislation specifically for promoting the rights of workers engaged in domestic work in India, but none of them met with success. Till now, a number of Private Member's Bills have been introduced in the Parliament on domestic workers, but they were either withdrawn or were lapsed.⁹ As such in India, there is no legislation specifically for domestic workers.

6 ILO, "Conditions of work and Employment: A Legal perspective", *series no.7 1*(International Labour Office, Geneva).

7 *Supra* note 2 at 24-25.

8 *Ibid.*

9 Armacost, Nicola Cunningham, "Domestic Workers in India: A Case for Legislative Action", Vol. 36, *Journal of the Indian Law Institute* 53-63 (1994); Neetha, N., "Contours of domestic service: Characteristics, Work relations and Regulation", 52:3 *The Indian Journal of Labour Economics*,501 (2009).

Foremost attempt to enact legislation for the protection of household workers was made in 1959,¹⁰ and in 1972 and then again placed a Bill in 1977.¹¹ Later on, another Bill was introduced in Parliament in 1989.¹² Through the said Bill, efforts were made to provide provision of legal protection to domestic workers. However, criticism overpowered the objective behind the said piece of document. And the said Bill was thus withdrawn. Met with no success, attempts were again made in 2004.¹³ It also met with the same result of being withdrawn. Later on, two similar Bills were again proposed in 2008, one by “the National Commission for Women” and another by “the National Campaign Committee for Unorganized Sector Worker” in the form of “the Domestic Workers (Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill, 2008”. But, neither of them found success.

Similarly, attempts were made in 2016 by Shashi Tharoor, a member of Lok Sabha in the form of another Bill.¹⁴ Aim behind the introduction of the said Bill was to ensure welfare, protection and security to domestic workers and “for matters connected therewith or incidental thereto”.¹⁵ One of the specific or can be called distinctive features of this Bill was “Rights of Domestic Workers”,¹⁶ which was not mentioned in any other Bills introduced before or after this Bill of 2016. Yet again in 2017, Oscar Fernandes put forward another Bill.¹⁷ After a period of time, similar bill was presented by Lok Sabha, member Sankar Prasad Datta.¹⁸ This Bill was drafted to ensure regulation of domestic work so that it may not only improve their working conditions but also help to secure social security to them; setting up of Boards both at State level and District level for compulsory registration of these workers, employers and service providers and also for setting up of Domestic Workers Social Fund and for matters connected therewith or incidental thereto.¹⁹ But none of these Bills turned into Act of

10 Available at: https://rsdebate.nic.in/bitstream/123456789/562294/1/PD_27_04121959_10_p1399_p1440_8.pdf. (last visited on July 4, 2023).

11 Vinita Singh, *Women Domestic – Workers within Households*, 93-95 (Rawat Publications, 2007).

12 *Ibid.*

13 The Housemaids and Domestic Servants (Conditions of Service and Welfare) Bill, 2004 (Bill No. XXXV of 2004). Available at: http://164.100.47.4/billtexts/rsbilltexts/AsIntroduced/XXXV_2004.PDF. (last visited on July 4, 2023).

14 The Domestic Workers’ Welfare Bill, 2016 (Bill no. 204 of 2016). Available at: <http://164.100.47.4/billtexts/lbilltexts/asintroduced/1573.pdf>. (last visited on July 4, 2023).

15 *Ibid.*

16 *Id.*, at ch. II.

17 The Domestic Workers (Regulation of Work and Social Security) Bill, 2017 (Bill No. 92 of 2017). Presented before Upper House of Parliament on April 7, 2017.

18 The Domestic Workers (Regulation of Work and Social Security) Bill, 2017. Laid before the House of People by on July 21, 2017, available at: <http://164.100.47.4/billtexts/lbilltexts/asintroduced/695LS%20AS.pdf>. (last visited on July 4, 2023).

19 *Ibid.*

the Parliament. Thus, the present scenario suggests that, even after such attempts made from time and again either by activists or by organisation, domestic workers in India found themselves as left empty hand.

For the said purpose, even a task force was constituted. This Task Force suggested for an extensive national policy for domestic workers which may to some extent help to reduce the present coverage gap. Its recommendations include:

*Extending the scope of existing legislation so as to include domestic workers within their protection or to frame or draft new laws or policy framework to afford these workers a sense of legal and statutory protection.*²⁰

In view of such recommendations, a draft of national policy for workers employed for domestic help was framed which is also looking for approval by Cabinet. This national policy is still under consideration of the Central Government.²¹The said national policy presents a weapon for protecting the rights of household workers and enabling them an access to social security. Thus, at present there is no legislation specifically for protection of domestic workers. Though, some welfare programs have been extended to include domestic workers within its coverage, but only when certain conditions stipulated by it is satisfied by the worker concerned.²²

So far as protection of domestic workers under existing legislations in India are concerned, only few legislations extended their protection to these workers. For instance, domestic workers are not provided with the minimum wages. So, certain states and not all, added “domestic work” in the list of “scheduled employment”.²³ Similarly, “the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” strive to safeguard domestic workers from evil practices of sexual harassment through the institution of a “grievance redressal bodies”, which shall be empowered to impose penalty in terms of fine upon the employer.²⁴ Though, the said inclusion was not found fruitful, due to difficulties in applying the law within the household.²⁵ Yet another legislation namely, “the Unorganised Workers’ Social Security

20 Draft National Policy for Domestic Workers, Government of India, New Delhi, 2011, para. 2.2.1.

21 Government of India, “Draft National Policy on Domestic workers under consideration”, PIB, Delhi, June 24, 2019, 6:08 PM, *available at*: <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1709013>. (last visited on Dec. 25, 2023).

22 *Supra* note 2.

23 “Report on the Working of the Minimum Wages Act, 1948” (Government of India, 2013), *available at*: http://labourbureau.nic.in/MW_2013_final_revised_web.pdf. (last visited on July 4, 2023).

24 *Supra* note 4 at Ch. III.

25 “Bill against sexual harassment a boost to domestic workers”, *Firstpost*, August 28, 2012, *available at*: <http://www.firstpost.com/india/bill-against-sexual-harassment-a-boost-to-domestic-workers-433985.html>. (Last visited on June 11, 2022).

26 *Supra* note 5.

Act” was enacted in 2008²⁶ to offer its protection to “domestic workers”. Under this statute, domestic workers were given protection as a worker engaged in unorganised sector and not as domestic worker specifically. Thus, no specific protection or provision were mentioned for domestic workers and protection afforded remain general for all workers working in the unorganised sector.

At present after a great labour law reform, this “Unorganised Worker Social Security Act, 2008” has been repealed and subsumed by “the Labour Code on Social Security”. This piece of legislation also extends protection to domestic workers but only as a worker of unorganised sector and not to domestic worker specifically. Thus, domestic workers are said to be least protected category of workers, though they remain highly vulnerable to exploitation by the placement agencies and their respective employer.

IV International labour organisation: Guardian of workers

The International Labour Organisation (ILO) is a United Nations agency, founded in 1919, with a mandate to advance social justice and promote decent work by setting international labour standards and in 1946, it came into being as a specialised United Nations agency.²⁷ It is the only international organisation with tripartite structure.²⁸

International Labour standard,²⁹ prepared and adopted by the International Labour Conference³⁰, plays an important role in designing the labour legislation of its member state. These instruments are authoritative in nature and provide guidance on policy formulation regarding different categories of workers. These instruments acts as a mere legal document till they are ratified by member states. Since, after ratification, it turns into binding obligation upon that member state.

There are eight fundamental conventions which are adopted by ILO after analysing the problems relating to workers.³¹ The aim of these legal instruments is to protect workers from exploitation and provide a safety net to them.

Thus, ILO acts as a guardian of workers since it prepares and adopts conventions and prescribe recommendations for protection of workers of its member states. Similarly, after realising the necessity to protect the domestic workers, who are often considered as unregulated and invisible workforce, the convention was adopted in June 2011.

27 Available at: <https://www.ilo.org/global/about-the-ilo/history/lang—en/index.htm>. (last visited on June 12, 2022).

28 The ILO consists International Labour Conference, Governing Body and International Labour Office.

29 Also called as ILO Conventions or Recommendations.

30 For the said purpose, two bodies are constituted, namely, CEACR and CAS, whose work includes making observations and issuing guidelines to the member nations who have ratified the Conventions.

31 *Supra* note 6, at 16.

This Convention was accompanied by a recommendation supplementing it. These two instruments contain precise standards in not only regulation of conditions of work but also provides minimum protection to workers so as to ensure decent working environment to these workers.

Apart from these two instruments, there are some other Conventions drafted and adopted by ILO which finds relevance in the regulation of conditions of work of domestic worker, these includes, “the Convention on Protection of Wages (No. 95), 1949”, “the Convention on Migration for Employment (Revised) (No. 97), 1949”, “the Convention on Minimum Wage Fixing (No. 131), 1970”, “the Convention on Migrant Workers (Supplementary Provisions) (No. 143), 1975”, “the Convention on Workers with Family Responsibilities (No. 156), 1981”, “the Convention on Termination of Employment (No. 158), 1982”, “the Convention on Private Employment Agencies (No. 181), 1997”, “the Convention on Maternity Protection (No. 183), 2000”.³²

V Ratification of ILO Conventions by India

Since 1922,³³ India is serving as a permanent member of the governing body of the ILO and established its first ILO Office in 1928.³⁴ The relationship between ILO and its member state aimed at socio-economic development with ground level approach and is based on the principles of mutual trust and respect.

Out of the eight fundamental conventions of ILO, India as a member of it has ratified only six of them, namely, “the Forced Labour Convention (No. 29)”³⁵ was adopted in 1930, “the Convention on the Abolition of Forced Labour (No. 105)”³⁶ was adopted in 1957, “the Equal Remuneration Convention (No. 100)”³⁷ was adopted in 1951, “the Convention on the Discrimination (Employment and Occupation) (No. 111)”³⁸ was adopted in 1958; “the Convention on the Minimum Age (No. 138)”³⁹ was adopted in 1973, and “the Convention on the Worst Forms of Child Labour (No. 182)”⁴⁰ was

32 The Labour standards adopted by International Labour Organisation, *available at*: <http://www.ilo.org/global/standards/lang—en/index.htm>. (last visited on March 12, 2022)

33 *Supra* note 15.

34 *Ibid.*

35 Ratified by India on 30.11.1954.

36 Ratified by India on 18.05.2000.

37 Ratified by India on 25.09.1958.

38 Ratified by India on 03.06.1960.

39 Ratified by India on 13.06.2017.

40 Ratified by India on 13.06.2017.

adopted in 1999⁴¹. The reason for not ratifying the remaining two core conventions by India was their non conformity with the national laws.

So far as the said Convention is concerned, it is still not ratified by India. Though the objective underlying the said convention is beneficial for the household workers who are one of the vulnerable categories of workers in the society.

VI Convention on decent work for domestic workers: A brief description

Labour legislations are the only way to accumulate a sense of protection to workers in any country. They act as catalyst to assure decent employment conditions for workers. Domestic workers, often struggling for their recognition as worker, are generally excluded from such legal protection and hence face deficit decent conditions of work. To mitigate such situation and to guarantee minimum labour protections to these domestic workers, “the Domestic Workers Convention on Decent Work, 2011” was adopted. Thus, this Convention ensures legal protection to domestic workers through minimum standards for working conditions.

It was on August 16, 2011⁴², that a piece of legislative protection in the form of the Domestic Workers Convention (C189) was adopted by the International Labour Organisation at its hundredth conference. The Convention was an important victory in the struggle to have legal protection against the exploitation of the rights of domestic workers. This Convention came effect from September 5, 2013. The Convention directs the ratifying countries to not only ensure minimum wage but also regulate labour conditions of household workers.

As per the said convention, domestic worker means and includes household worker who undertakes to work household chores within the employment relationship, where the word “domestic work” includes any work whether done within the household or for the household(s) of the respective employer. However, those who works in household chores of employer only for a short period or only occasionally shall not be included in the term domestic worker as per the meaning so stipulated in the said document.⁴³ Thus, domestic work must be adopted as a form of occupation and not merely for a short period of time or for an occasion.

41 Government of India, “ILO Fundamental Conventions”, PIB, Delhi, July 24, 2017, *available at*: <https://pib.gov.in/newsite/PrintRelease.aspx?reld=168889>. (last visited on May 25, 2022); “ILO Fundamental Convention – India ratified six out of the eight core/fundamental International Labour Organisation, Delhi”, *Business Standards*, July 25, 2017. *Available at*: https://www.business-standard.com/article/government-press-release/ilo-fundamental-conventions-india-ratified-six-out-of-the-eight-core-117072400725_1.htm. (last visited on May 25, 2022); *Supra* note 11.

42 *Supra* note 3.

43 *Supra* note 3, art. 1.

Application of the Convention extends to all domestic workers. Provided that the worker is not a beneficiary of any other protection.⁴⁴ Thus, convention burdens the member state to indicate the groups of workers who are to be excluded therefrom and also suggest provisions to expand the application of this convention.⁴⁵

Under the convention, the ratifying member shall be obligatory to not only take relevant measures as stipulated in this Convention with respect to domestic workers but also warrant effective promotion of human rights of domestic workers.⁴⁶ The Convention, thus is wider in its scope.

This Convention aims to protect the domestic workers from exploitation and thus confers a bundle of rights to these workers. A list of these rights has been discussed in detail in the later part of this paper.

It also provides for the establishment of effective and accessible dispute redressal system. As such in case of violation of any rights so conferred by this convention, domestic worker shall be entitled to reach the respective authorities for justice.⁴⁷

The requirement of this convention is proper implementation⁴⁸ by the ratifying member and have no overriding effect on other provisions which may otherwise apply to domestic workers under other piece of law.⁴⁹ After ratification by the member state, the same has to be conveyed to the respective authorities for making registration of ratification.⁵⁰ Thus, the said Convention becomes binding only upon those members, whose ratification have been so registered.⁵¹

Convention also lays down the procedure for denunciation. Thus, a ratifying member is obliged to denounce it after the expiry of period.⁵² Thus, even after ratification, member state is at liberty to denounce and not bound to comply with the convention compulsorily.

VII Convention on Decent Work: A Bundle of Rights for Domestic Workers

For the domestic workers, Convention on Decent Work (referred to as “Convention”) can be called as bundle of Rights. For instance, this Convention ensures that domestic workers be provided with rights such as right to form association, to exercise collective

44 *Id.*, at art. 2(2).

45 *Id.*, at art. 2(3).

46 *Id.*, at art. 3(1) and 3(2).

47 *Id.*, at art. 17.

48 *Id.*, at art. 18.

49 *Id.*, at art. 19.

50 *Id.*, at art. 20.

51 *Id.*, at art. 21.

52 *Id.*, at art. 22.

bargaining, to have conditions of work free from any form of discrimination, etc.⁵³ Apart from assuring rights to the domestic workers, this document imposes obligation on the member states to adopt protective measures to ensure a sense of protective environment of work to these workers.⁵⁴ It also ensures that domestic worker be about the terms and conditions of their employment adequately, so that they may not be exploited due to their low level of literacy.⁵⁵

Similarly, rights such as weekly rest, healthy and safe working environment, fixed amount of remuneration, etc., are also provided by this Convention.⁵⁶ It also requires member countries to ensure protection pertaining to health, social insurance and maternity, in progressive manner after due consultation, as per need of time.⁵⁷

To protect from the clutches of placement agencies, this convention requires member states to formulate a regulatory mechanism to check and regulate these agencies and frame a set procedure for workers to lodge cases of abuses.⁵⁸ Lastly, it ensures dispute redressal mechanism.⁵⁹

After considering everything, and every aspect of the Convention, it cannot be denied that, if put into force, these provisions of this Convention would be a progressive step in establishing a humane environment of work for domestic workers in India.

VIII A Supplementary recommendation to the convention on decent work

Discussion of the said Convention would remain incomplete if the Recommendation No. 201 is not read with it. Thus, this Recommendation No. 201 is also called as a supplementary recommendation to convention.

Said Recommendation provides direction on several matters such as in vitalizing policy framework for domestic worker, etc and supplement the provisions of Convention. Thus, it plays a crucial role in implementing the provisions of the Convention by way of guidance to ratifying member states. As such this recommendation requires to be read in with the Convention. However, unlike Convention, it is non-binding in nature.⁶⁰

53 *Id.*, at arts. 3 and 4.

54 *Id.*, at arts. 5 and 6.

55 *Id.*, at art. 7.

56 *Id.*, at arts. 8-12.

57 *Id.*, at arts.13(2) and 14(2).

58 *Id.*, at art. 15.

59 *Id.*, at art. 16.

60 ILO, *Decent work for Domestic Workers – Convention 189 and Recommendation 201 at a glance* 7 (International Labour Office, Geneva, 2011)

IX Effects of ratification of the Convention

After ratification of the said instrument, it becomes an obligation to implement the provisions of the said convention. As such, a question may arise as to how provisions of the said convention be implemented.

Article 18 of the said Convention provides that depending upon the prevailing situations, underlying provisions shall be enforced either by enlarging the scope of existing legislations or by framing a fresh statute for these workers. Apart from this, Recommendation also provides for implementation by means of awareness among workers or by increasing the competency of workforce, *etc.*⁶¹

Thus, if ratified by India, it becomes a mandatory obligation to put the provisions of the said Convention into effect. And for this implementation, either existing labour legislations would be extended to protect domestic workers or new legislations would be enacted specifically for domestic workers. As such, the long-fought struggle for enacting legislation to regulate the conditions of work of the household workers in India might get justice.

Ratification of the Convention as a sole solution for protection of domestic workers

The Convention ensuring policy framework for decent work and the supplementary recommendation⁶² can be considered as first legal document at the international level dedicated to domestic workers. It not only recognizes socio-economic significance of domestic work, but also guarantees these workers, rights generally exercised by other workers and are basic human rights. It also calls to devise effective measures to address concerns of domestic workers regarding their exclusion from labour and social protection.

Further, if different provisions of the said Convention and Supplementary Recommendation are taken into consideration, it can be seen that different provisions of a single instrument intend to provide a sense of umbrella protection to domestic workers. For instance, article 3 of the Convention together with paragraph 2 of the Recommendation provides for the advancement and safeguarding human rights; article 4 of the Convention together with paragraph 5(1) of the Recommendation provides for the elimination of child labour; article 5 of the Convention together with paragraph 7 of the Recommendation provides for the protection from exploitation; article 6 of the Convention provides for the decent working conditions; article 7 of the Convention together with paragraph 6 of the Recommendation provides for the awareness as to terms and conditions of employment; article 10 of the Convention together with

61 *Id.* at 9.

62 *Supra* note 3.

paragraphs 8-13 of the Recommendation provides for the equal treatment in matters relating to working time, rest, leave, etc.; article 11 of the Convention together with paragraphs 14, 15, 20(3) of the Recommendation provides for the minimum wages and non-discrimination in payment of wages; article 13 of the Convention together with paragraphs 19 and 4 of the Recommendation provides for the occupational safety and health; article 14 of the Convention together with paragraphs 20 and 26(2) of the Recommendation provides for the social security, etc, for “domestic workers”.⁶³

Thus, it becomes quite clear that implementation of the Convention appears as a sole solution for all problems of domestic workers since it is relevant from a broader human rights perspective.⁶⁴

Reasons behind non-ratification of the Convention by India: Non-acceptable

It's been a decade ago, that the Convention was adopted and enforced by the international labour organisation. But, till now, there is no information relating to the ratification of the said instrument by India. It is true, that ratification of such legal document takes time since it requires a long procedural step by the respective government. But, in case of India, situation is different. Instead of taking steps for ratification, reasons for non-ratification has been produced before the general public.

For instance, in response regarding ratification of the said convention, it was stated by the Labour Minister Bandaru Dattatreya that – “*Since the national laws and practices are not in conformity with the provisions of the convention, it means the ILO Convention No. 189 has not yet been ratified by India.*”⁶⁵

When asked about the national policy, it was further stated by the Honourable minister – “*said National Policy is still under consideration of the government. However, no time frame has been indicated to finalise the policy.*”⁶⁶

In another statement, it was stated that – “*Since term domestic work is a subject of state government, it is the responsibility of respective state governments to take action in protection of domestic workers from exploitation.*”⁶⁷

Thus, from above statements of union labour minister, it becomes clear that there is unnecessary delay in taking steps for ratification of the said Convention No. 189. At

63 *Supra* note 60 at 30.

64 The UDHR, 1948, arts. 23 and 24. The UN Committee on Economic, Social and Cultural Rights, General Comment No. 18, 2006, para. 10.

65 “India doesn’t ratify ILO Convention on domestic workers: Bandaru Dattatreya”, *The Economic Times*, March 18, 2015, <https://m.economictimes.com/news/economy/policy/india-doesnt-ratify-ilo-convention-on-domestic-workers-bandaru-dattatreya/articleshow/46610697.cms>. (last visited on June 9, 2022).

66 *Ibid.*

67 *Ibid.*

first, reason for non-ratification was non-conformity of the convention with national laws. It is not yet known about which laws, above statement was said. Since, as of now, in India, no distinct piece of legislation has been enacted for safeguarding the rights of household labourers. And later on, there was shift of burden from centre to states in protecting domestic workers from exploitation. Thus, reasons so stipulated can be termed as non-acceptable.

X Conclusion

From the above discussion, it becomes clear that the said Convention and the accompanying Recommendation, designed by ILO, bid a notable step to make decent environment of work an actuality for household workers. Provisions of the Convention as analysed above describes the essence and purpose behind the Convention. The emphasis is on extending the protection coverage of labour law to domestic workers. Many countries, being member state of ILO, has before now ratified the convention in the past.⁶⁸ As a result of such ratification, they have followed new policy frame work as directed by these international instruments, which is an inspiring step before all others who are still waiting to ratify it.

In India, till now there is no legislation for the protection of domestic workers. Reasons may be diverse. Domestic workers in India are still struggling for their recognition as workers. They are not even described as workers and thus they lag behind in getting statutory protection. These workers are in need of recognition as workers and statutory protection. And the only way to give these workers their due is by ratification of Convention. Thus, it can be concluded that, ratification of the said Convention, can to some extent help in not only recognition of domestic workers but also in their protection against exploitation and their upliftment in India. Parliament of India is as such suggested to exercise the authority conferred to it that is to make law to give effect to an international agreement, treaty or convention.⁶⁹

68 *Supra* note 3. Till now 35 countries have ratified the ILO Convention No. 189. As such said Convention is in force in these countries. Among them are Antigua and Barbuda (ratified in July 28, 2021 and will enter into force on July 28, 2022), Argentina, Belgium, Finland, Germany, Grenada, Guinea, Guyana, Ireland, Italy, Jamaica, Madagascar, Malta, Mauritius, Chile, Mexico, Namibia, Nicaragua, Dominican Republic, Ecuador, Norway, Brazil (ratified in July 8, 2021 and will enter into force on July 8, 2022), Panama, Paraguay, Peru, Philippines, Portugal, Sierra Leone ratified in August 25 and will enter into force on August 25, 2022), South Africa, Sweden, Switzerland, Uruguay.

69 INDIA CONSTI. art. 253.

“Today’s entry into force of Convention 189 sends a powerful signal to more than 50 million domestic workers worldwide. I hope that it will also send a signal to ILO member States and that we soon see more and more countries committing to protect the rights of domestic workers,” concluded Tomei.⁷⁰

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⁷⁰ *Supra* note 1.

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