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**SOCIAL SECURITY OF DOMESTIC WORKERS: INDISPENSABLE YET UNPROTECTED**

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# SOCIAL SECURITY OF DOMESTIC WORKERS: INDISPENSABLE YET UNPROTECTED

Raman Sharma\* & Daya Devi

## Abstract

*The fundamental essence of social protection of domestic workers is to make the nation accountable for providing a minimum level of well-being against the future uncertainties of life and make them capable enough to live life with dignity. Domestic Workers constitute a large, usually hidden workforce, contributing a crucial role in maintaining household work, yet facing significant exploitation due to the unorganised nature of their work, lack of legal protections, and social stigma, leaving them in destitution, with low wages, and vulnerable working conditions. It is high time to have comprehensive policy interventions to safeguard their rights and provide them with a dignified life.*

**Key Words-** Social Security, Domestic Workers, Exploitation, Vulnerability, Reforms, Informal

## Introduction

The domestic work service in a global world, from time immemorial, has been significant due to its quantitative importance in terms of the volume of employment. The domestic worker sector includes a considerable segment of people contributing and strengthening substantially towards society's social and economic evolution, even though the services are often taken as private and less visible compared to other sectors. Paradoxically, as a group, domestic workers have been excluded from the human right to social security. Regardless of its attributes and benefits, the domestic work sector is considered a "difficult-to-cover" group. Work is carried out in a private household and recurrently for multiple employers. The occupation is characterised by inhuman working conditions, wide open to exploitation, meagre earnings, lack of legal protection, and extreme casualness.<sup>1</sup>

The domestic workers can be *Part-time worker*, who engages for one or more employers for a specified number of hours per day or performs specific tasks for each employer every day. A *full-time worker* works for a single employer for a specified number of hours and returns to his/her home after work. Another category is a *Live-in worker*, who works full-time for a single employer and also resides on the employer's premises, provided by the employer.<sup>2</sup>

## Laws And Policies

The matter of unfair treatment of domestic workers is persistent and usually reported. In India, domestic workers have fallen under the umbrella of unorganised labour and have been excluded from the purview of social security and welfare laws. In the absence of any legal enactment on this behalf, usually, the domestic workers employed in any household came across brutal exploitation in their day-to-day lives. They normally got low wages, or in some cases, they rendered their service without wages, worked for prolonged hours, were taken as a slave, got total reparation from their household, were subjected to beating & molestation, etc. However, few state governments have taken action to improve the vulnerable conditions of domestic workers. Still, all such efforts made by states have rested in vain due to the need for central legislation on this matter.

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<sup>1</sup> Social protection for domestic workers: Key policy trends and statistics, INTERNATIONAL LABOUR OFFICE, GENEVA, International Labour Organization 2016

<sup>2</sup> Domestic Workers in India/WIEGO, <http://www.wiego.org/WIEGOHome>InformalEconomyLaw>CountryStudies>India>

## Social Security of Domestic Workers

To ameliorate the living standard & to provide regularity of employment to domestic workers number of efforts have been made by formulating policies and legal frameworks.<sup>3</sup>

### The Unorganised Sector Workers' Social Security Act, 2008

The primary objective of the Unorganised Sector Worker's Social Security Act, 2008, is to cover a segment of the labour force, including domestic workers, under the umbrella of the social security system. Under the ambit of the Act, domestic workers are recognised as “*Unorganised Workers*” and entitled to social security benefits. It provides schemes relating to employment security, disability benefits, work-related benefits like maternity, health insurance, minimum wages, non-discrimination based on gender, skill development programs, medical support, and financial assistance in case of injury suffered due to any unfortunate incident occurring at the place of work, etc., and elderliness benefits.<sup>4</sup>

In *National Domestic Workers Welfare v. State of Jharkhand and Ors*,<sup>5</sup> the court observed that:

*“The labour laws which are enacted by the Parliament and the State Legislature, namely the Industrial Disputes Act, the Workmen’s Compensation Act, the Factories Act, etc., apply to a minimal number of workers/employees as defined under the Acts and as per one survey report, only 3 per cent of the labourers are covered under those enacted legislations. 97 per cent of the workers are beyond the purview of these labour laws. Therefore, the Parliament enacted the Unorganised Workers Social Security Act, 2008, which covers most of the left-out workers”.*<sup>6</sup>

In *Sharamjeevi Mahila Samiti v. State of NCT of Delhi*,<sup>7</sup> the apex court has directed the Board to file a statement before this court regarding the steps they have taken for the welfare of the unorganised sector, particularly the domestic workers, within one month from today. The Labour Department of the Government of NCT of Delhi is directed to cooperate with the residents' welfare associations. Justice can be achieved for domestic workers if the Legal Service Authority is also involved in the process, since it can depute para-legal volunteers.

In spite of the existing legal framework, discharging these benefits for domestic workers is hard due to the casual nature of their work, lack of documentation, and the hardship in recognising the employer.

### A critique

The Act, though, is an important piece of legislation on social security for unorganised workers, yet it fails to define social security to a greater extent. The expressions social security and welfare are used interchangeably, which does not do justice to the title of the Act. The Act does not provide for any law that deals with the various issues of employment or unemployment, its regulation, wages, conditions of work & many more. The Act is not merely incomplete but actually dysfunctional in dealing with social security issues.<sup>8</sup> It does not impose any liability on the employer to contribute to the social security of domestic workers. It fails to acknowledge social security as a ‘right’, and it also does not provide an effective mechanism for the enforcement of the Act. The schemes mentioned in the Act apply to the class of section living below the poverty line and certain specified occupations, and not solely to the workers employed in the unorganised sector,

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<sup>3</sup> Statement of Objective & Reasons, Domestic Workers Welfare & Social Security Act, 2010

<sup>4</sup> Section 3 of the Unorganised Workers Social Security Act, 2008

<sup>5</sup> W.P. (PIL) No 7032 of 2012 with W.P. (PIL) No. 2810 of 2012,

<sup>6</sup> All India Progressive Women Association Jharkhand V. The Union of India & Ors W.P.(PIL) No.7032 of 2012

<sup>7</sup> Petition (S) for Special Leave to Appeal (Crl.) No (s) 150/2012 available at

<sup>8</sup> T.S. Sanskaran, 'A critique of India's Unorganised Workers Social Security Act 2008' 16/02/2009.

especially the domestic workers. There is no provision of penalty against defaulting employers or against those who refuse to register informal workers.<sup>9</sup>

#### **The Minimum Wages Act, 1948**

Getting a minimum wage is one of the necessities of any work, as it ensures a basic standard of living, including health, dignity, comfort, education, and other incidents.<sup>10</sup> On the interpretation of the Act, the apex court in *M/S Bhukusa Yamasa Kshtriya v. Sangamma Akola Taluka Bidi Kamgar Union*,<sup>11</sup> unanimously held that “the object of the Act is to prevent exploitation of the workers, and for that purpose, it aims at the fixation of minimum wages which the employer must pay. The legislature undoubtedly intended to apply the Act to those industries or localities in which, by reason of causes such as unorganised labour or absence of machinery for regulation of wages, the wages paid to workers were inadequate in the light of the general level of wages and subsistence level”. Domestic workers are usually among the lowest paid, are considered the most unorganised workforce, and are generally excluded from minimum wage protection. ILO Convention No. 189 states that every member must ensure the enjoyment of a minimum wage for domestic workers.<sup>12</sup>

The execution of the Act remains poor due to non-enforcement, due to the private and hidden nature of the workplace. The majority of the workers are employed without registration with any authority.

#### **The Payment of Wages Act, 1936**

It prevents the unfair treatment of labour, especially in the unorganised sector of the workforce, and ensures imperative defence to employees as it makes it obligatory for the employer to pay wages to the workers before the expiry of a specified day in the prescribed manner.<sup>13</sup> However, to a greater extent, the Act failed to protect domestic workers, who, time and again, were paid less than required.

The Act has a limited scope or is ineffective for domestic workers; it is not pertinent to self-employed or home-based workers. The informal nature of work bars or closes the door to legal remedy.

#### **Domestic Workers Welfare and Social Security Act 2010**

As per the Domestic Workers Welfare and Social Security Act, 2010, domestic worker means “a person who is recruited for remuneration whether in cash or kind in any household or similar establishment through any agency or directly, either on a temporary or contract basis or permanent, part-time or full time to perform any household or allied work and includes a replacement worker who renders his/her services as a replacement for the main workers for a short and specific duration of time as agreed with the main worker.” Household and allied work includes but is not limited to activities such as cooking or a part of it, washing clothes or utensils, cleaning or dusting the house, driving, caring for or nursing children, sick, old, mentally challenged or disabled persons.<sup>14</sup>

For the better execution of the Act, committees,<sup>15</sup> designated with the main function of framing suitable blueprints on the abrogation of any form of peddling of workers,

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<sup>9</sup> Dr. S.C. Srivastava, “Legal Protection and Social Security in Unorganized Sector”, P.41 The Book

Line publication, New Delhi, 2017

<sup>10</sup> Minimum Wages Notification & Rates 2016-17, Karnataka Labour Journal, <http://labour.kar.nic.in,p.1>

<sup>11</sup> AIR 1963 SC 806

<sup>12</sup> Minimum Wage Policy Guide, International Labour Organization, <https://www.ilo.org>

<sup>13</sup> Report on the Working of the Payment of Wages Act, 1936 for the year 2012, Govt. of India Ministry of Labour & Employment Labour Bureau, Chandigarh, P.1,

<sup>14</sup> Section 2 (f) of Domestic Workers Welfare and Social Security Act 2010

<sup>15</sup> Central Advisory Committee, State Advisory Committee

ensuring a modest environment to render services, giving suggestions for efficient execution of the Act, looking into the welfare funds and their utilisation, etc.<sup>16</sup>

It carries on activities like registration of domestic workers, employers, and service providers, instant relief in case of any unfortunate incident, monetary assistance for the schooling of the offspring of such workers, medical support in case of any exigency, maternity benefits, resolving any dispute, etc.<sup>17</sup> The Act talks about the abolition of child labour.<sup>18</sup>

#### **Domestic Workers Welfare Fund**

A fund is constituted with an object to meet the cost incurred in carrying out the program and processes that are required or desirable to secure and encourage the well-being of domestic workers and to grant any financial assistance as an aid in relation to any scheme.<sup>19</sup> As per the Act, every domestic worker who has attained a specified age and completed a specified period of domestic work is eligible to be registered as a beneficiary and is entitled to certain benefits.<sup>20</sup> A minimum contribution from the beneficiary's side is required to maintain a welfare fund.<sup>21</sup>

Every essential particular of the domestic workers is to be maintained and given to the concerned authority. The domestic worker is allowed to work only for a fixed period of time in a day and is entitled to a period of rest and all other basic requirements. If, in any exceptional situation, his time at work exceeds the prescribed limits, overtime remuneration is allotted to him as per the prescribed rate.<sup>22</sup> The worker is entitled to a minimum salary as may be fixed on this behalf.<sup>23</sup> To protect the interests of domestic workers stringently, the government will now draft a bill.<sup>24</sup>

The Act enables a domestic worker to have the ability and capacity to bargain for the terms & conditions of employment. The enactment of the Act works as an armour, which resolves the problems of domestic workers to a greater extent, like prolonged working hours, deplorable working conditions, irregular wages, sexual harassment, discrimination & lack of freedom, etc.

Despite its contribution towards welfare and social security for domestic workers, the Act has some limitations. The Act grants discretionary powers to the State government in regard to constituting State Boards and District Boards for the better execution of the Act. The whole purpose of the Act will be ruined if no such authority is constituted. Hence, such discretionary power to the concerned authority should be dispensed & it should become mandatory for the concerned authority to establish such a Board and Committees.

The Act is silent on the rates of any contributions and benefits in the case of social security and other welfare measures for the beneficiaries. The State Boards & District Boards are not competent to take action in case of infringement of any provisions of the Act. This incapacity of such Boards led to the denial of access to speedy and economic justice. No personal accountability is imposed on the inspecting authority for the failure to protect the interests of domestic workers. There is a lack of employment protection for workers. The Act does not provide employment security

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<sup>16</sup> Section 4 -7 of Domestic Worker Welfare & Social Security Act, 2010

<sup>17</sup> Section 8 & 13 of the Act, 2010

<sup>18</sup> Section 18 of the Domestic Worker Welfare & Social Security Act 2010

<sup>19</sup> *Id.*, Section 19

<sup>20</sup> *Id.*, Section 20

<sup>21</sup> *Id.*, Section 24

<sup>22</sup> *Id.*, Section 26

<sup>23</sup> *Id.*, Section 27

<sup>24</sup> <https://www.firstpost.com/India/govt-radices-domestic-workers...17/8115>, The Domestic Workers Regulation of work & social Security Bill, 2017

to domestic workers. Due to this insecurity, no one dares to come forward in case of infringement of any employment rights.<sup>25</sup>

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

The Act secures protection for domestic workers against sexual harassment. Under the Enactment, Internal Complaint Committees have been constituted at different levels to prevent, prohibit, and redress sexual harassment.<sup>26</sup>

There have been several hardships and issues faced by domestic workers while availing or enforcing the rights enshrined under the Act, 2013. Insecurity of losing employment and social stigma have been at the forefront. It is very difficult to find a defined workplace in the case of domestic workers; this leads to ineffective utilisation of legal remedies. Evidence of harassment is not easily found due to the scarcity of witnesses and the private nature of work.

### **The Equal Remuneration Act, 1976**

The Equal Remuneration Act, 1976, aims to provide similar pay for similar work without any discrimination on the basis of gender. But in general, domestic workers face wage inequality. The Act is looked upon as an enactment that promotes gender equality in the workplace. It also obligates the employers not to differentiate on the basis of gender at the time of hiring.

The aim of the enactment of similar pay for similar work has never been achieved, especially in the case of domestic workers, due to the following factors-

- (i) The less attention paid to regulation over the unorganised sector leaves domestic workers at the whim of employers.
- (ii) Isolated and invisible characters of work render gender-based discrimination.
- (iii) Absence of social security benefits.
- (iv) Placement by unregulated agencies.
- (v) Placement without written agreements makes it difficult to enforce equal wage provisions.<sup>27</sup>

### **The Bonded Labour System (Abolition) Act, 1976**

The exploitation of a man by another man in eternal servitude originated with the existence of mankind. Even after independence, a system of bondage labour still exists in some portions of the nation; it implies the infringement of basic human rights. The factors that promote bonded labour include literacy, poverty, etc.

In spite of the legislation on bonded labour, which aims at the abolition of bonded labour, domestic workers, especially children, continue to be trapped in debt bondage, forced labour, and trafficking.

In *Rajan Kudumbathil v. Union of India & Ors.*,<sup>28</sup> a writ petition was filed to highlight the problems faced by migrant labourers and domestic workers. After considering the facts and circumstances of the case, the Court held that *"it is the responsibility of a welfare State to ensure that no citizen of this country is denied his right to live in dignity. He is entitled to get basic amenities in life, at least to reasonable levels, whether he belongs to the same State or hails from outside the State"*.

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<sup>25</sup> 012-Employment Right Protection & Conditions of Domestic Workers <http://www.14.139.60.114:8080/jspui/bitstream/...>

<sup>26</sup> Section 6 POSH Act, 2013; See also Does the POSH Law Protect Domestic Workers Against Sexual Harassment At Workplace? <https://www.ungender.in/how-you>

<sup>27</sup> Domestic Workers In India: Policy Frameworks and Reforms, <https://www.pmfias.com/domestic>

<sup>28</sup> WP (C). No. 15393 of 2009 (S), available at <http://legalcrystal.com>



### **The New Labour Codes**

Code on Wages, 2019; Code on Occupational Safety, Health and Working Conditions, 2020; and Social Security Code, 2020 aim to ensure fair working conditions, occupational safety, grievance redressal mechanisms, and other social security benefits to domestic workers. For better execution of these benefits to domestic workers, the Labour Bureau has conducted an **ALL-INDIA DOMESTIC SURVEY. The E-Shram portal, a National Database of informal workers, including domestic workers, has been launched.**<sup>29</sup>

### **KEY ESSENTIALS OF DOMESTIC WORKERS UNDER NEW LABOUR CODES**

- Inclusion of domestic workers in the category of informal workers and entitlement to social security benefits.
- Pressure on the government to frame and implement social security programs for domestic workers.
- National Database of domestic workers.

However, it is very much clear that there are no provisions in these legislations that can target the specific needs of the domestic workers. Thus, we have no particular legislation to safeguard domestic workers across the nation.

### **3. CONCLUSION AND SUGGESTION**

From the above discussion, it becomes clear that no dedicated law or policy regulates a large segment of domestic workers. It is true that domestic workers represent a socially and economically underprivileged section of society and are mostly neglected, even from the basic social security measures, such as low wages, uneven employment, and vulnerable conditions of work, etc. Now it is high time for the government to look into the social security of these workers by framing a uniform policy and legislation in this regard.

### **SUGGESTION**

- There is a need for greater coordination between the Union and the state governments to cope with the challenges faced by domestic workers.
- Comprehensive policy and legislation required.
- The unionisation of domestic workers by legalising domestic workers' unions is needed for their representation.
- Accurate data on domestic workers helps in a better assessment of their presence.
- Recognises domestic work as formal employment.
- Recruitment agencies should be regulated and registered.
- Requires employer contribution under social security measures.

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<sup>29</sup> Condition of Domestic Workers, Ministry of Labour & Employment <https://pib.gov.in/PressRelease>