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Kindling a Legislative Enactment: Inclusion of Domestic Workers under the Labour Laws Regime

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ABSTRACT

“The forbidden fruit is always the tastiest.”

It is an undeniable and unequivocal principle of societal and economic evolution that economic prosperity is a result of human labor and efforts, be it in the form of physical labor or mental/intellectual labor. The entire economic setup can be divided into two main categories based upon the service conditions of workers/employees namely Organized Sector and the Unorganized Sector. The Organized Sector is equipped with better working conditions, abidance of labor laws, maternity benefits, proper working hours, paid leaves among many others.

The Unorganized Sector is not a regulated sector as opposed to Organized Sector and lacks proper working environment and benefits to the workforce. These sectors are the backbone of our economic capabilities and it becomes utmost necessary to ensure that these sectors are properly regulated so that the workforce being employed here can work at maximum efficiency and at the same time, work in a conducive and favorable environment.

There have been an ample of legislations to regulate various kinds of workforces such as Gig Workers, Beedi workers, plantation workers etc. Despite its prevalence for many decades, the domestic workers have yet not received recognition in our prevailing labor laws.

Hence, it becomes imperative for us to analyze and incorporate domestic workers in our existing legislations and give them the necessary benefits and safeguards.

This paper tends to analyze existing laws in India and their exclusivist nature. This paper shall establish the necessity to provide legislative recognition to domestic workers and the key elements to consider while framing the appropriate legislation.

I. INTRODUCTION

A panoramic view of the economic system compels us to believe that human resource is an essential and inalienable ingredient for economic prosperity. Effective utilization of human resources is essential for economic and societal growth moreover so to provide a strong

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foundation to our economic model as well. A pivotal element of human resource in an industry is the workmen and employees. They are the backbone of an industry and it is essential that their well-being is maintained.

India, as a matter of political philosophy, relies on a mixed economic model which tends to suggest that the Indian regime is focused on economic growth and development but at the same time, committed to ensure the overall well-being of the laborers, workers and employees. To further this objective, India has been materializing its commitment of ensuring healthy standards for workers by enacting various legislations, authorities, rules and regulations.

India, in this pursuit, has been successful in incorporating a wide variety of laborers and workers under the ambit of its labor legislations such as Gig workers, Beedi and Cigar Workers etc. ²Though there is a constant debate about the ambiguous nature of the definition of ‘workmen’ and ‘employees’, the existing set of labor legislations have completely and absolutely kept domestic workers out of its purview barring a mere mention of them under the Unorganized Workers Social Security Act, 2008. ³

Domestic workers form a large chunk of domestic workforce but is hugely scattered and has a plethora of issues. The issues range from proper wages, working hours, maternity benefits, working conditions, termination etc. It is a well-known fact that all these issues pertain largely to the organized sector and given the employer-employee relationship in case of domestic workers, not many of these benefits seems pragmatic to be implemented. But what is needed is their recognition in a legislative framework and its implementation.

There are existing laws pertaining to workers in an unorganized sector, but even those laws fail to accommodate domestic workers under their purview. It is an undeniable fact that it is extremely difficult to implement benefits for domestic workers, but domestic workers too are entitled for certain benefits and statutory framework for the conditions they work in.

II. EXISTING SCENARIO: EXAMINING THE EMERGENCE OF A LEGISLATIVE VOID

The prevailing scenario pertaining to domestic workers is not uncommon. They are facing tremendous difficulties and hardships in the hope of getting adequate wages. Domestic Workers are working across India and also globally.⁴ They are employed for assistance in household chores and other ancillary activities. Domestic workers come from various parts of India

² Ministry of Labour and Employment, <https://labour.gov.in/list-enactments-ministry> (last visited Oct. 10, 2023).

³ SEWA, *Domestic Workers’ Laws and Legal Issues in India*, WIEGO (Nov. 2014, 10:04 AM), <https://www.wiego.org/sites/default/files/resources/files/Domestic-Workers-Laws-and-Legal-Issues-India.pdf>.

⁴ International Labour Organization, https://www.ilo.org/newdelhi/areasofwork/WCMS_141187/lang-en/index.htm (last visited Oct. 10, 2023).

primarily from the most backward and downtrodden strata of society. Mostly, they are employed by certain placement agencies who hire them and place them in houses located in urban areas. They charge high commissions but barely pay the workers their wages, and even if they pay, it is miniscule. Mostly, workers come from states like Bihar, Jharkhand, Orissa, Chhattisgarh and other rural areas with the sole motive of earning and supporting themselves and their families financially.⁵

As of today, India is devoid of any separate legislation to protect and safeguard the interest of domestic workers. This non-recognition of domestic workers has catastrophic consequences on their overall well-being and it also increases the risk of their exploitation manifold. The Indian regime has been so proactive in facilitating and recognizing workers working in manufacturing units, industries and other establishments but it has seriously failed in providing recognition to one of the most scattered and hugely exploited group of workers that is, the domestic workers.

(A) The Unorganized Workers Social Security Act, 2008⁶

a. Introduction and Features of the Act

The Unorganized Workers Social Security Act, 2008 is a legislation which tends to provide a slight recognition to domestic workers by terming them as home-based workers under the ambit of Section 2 (b)⁷ of the Act. The definition includes all persons who are engaged in the production of goods or services in the household of an employer or any other place of his or her choice other than the workplace.

The definition under Section 2 (b) of the Act encompasses a wide spectrum of workers which should be the proper approach as it shall enable and provide a wider coverage with regards to the protections enumerated under the Act. It not only includes cleaning workers but also drivers, gardeners etc. thus enabling almost every kind of worker having recognition under the Act. Although the Act specifies the term 'home-based worker' thereby giving recognition to domestic worker, the entire act is silent on any specific protection being granted to unorganized workers. The Act provides for the Central Government and the State Governments to formulate schemes and policies for unorganized workers under Section 3 of the Unorganized Workers Social Security Act, 2008.⁸

The Act lays down the formulation of a National Social Security Board for Unorganized

⁵International Labor Organization, https://www.ilo.org/newdelhi/areasofwork/WCMS_141187/lang-en/index.htm (last visited Oct. 10, 2023).

⁶ The Unorganized Workers' Social Security Act, 2008, No. 33, Acts of Parliament, 2008 (India).

⁷ The Unorganized Workers' Social Security Act, 2008, § 2(b), No. 33, Acts of Parliament, 2008 (India).

⁸ The Unorganized Workers' Social Security Act, 2008, § 3, No. 33, Acts of Parliament, 2008 (India).

Workers⁹ which was established in 2009 and The Unorganized Workers' Social Security Rules, 2009¹⁰ were also framed in this regard. Section 6 of the Act also provides for the constitution of the State Social Security Board for Unorganized Workers and also lays down the requisite composition, functions and other necessary aspects¹¹. There are various states which have established the State Social Security Board for Unorganized Workers namely Karnataka, Chandigarh, West Bengal, Assam, Orissa, Gujarat, Andaman & Nicobar, Tripura, Rajasthan and Andhra Pradesh¹²

The State Governments of Andhra Pradesh, Jharkhand, Karnataka, Kerala, Odisha, Rajasthan, Haryana, Punjab, Tamil Nadu, and Tripura have incorporated domestic workers into the provisions of the Minimum Wages Act. Consequently, these workers possess the right to lodge complaints with the relevant authorities in the event of any grievances pertaining to this matter.¹³

b. Analyzing important aspects of the Act

An important and vital feature of the Unorganized Workers Social Security Act, 2008 is its scheme funding mechanism. Section 4(1) and Section 7(1) provide for the funding structure of the schemes formulated by the Central and the State Government in accordance with the provisions of the Act. Section 4(1) provides for broadly 3 categories for funding methods in case the scheme is formulated by the Central Government which are

1. Wholly funded by the Central Government
2. Partly funded by both Central and State Government
3. Partly funded by Central Government, partly by State Government and partly by contributions from beneficiaries or employers as prescribed.¹⁴

Section 7(1) provides for broadly 3 categories for funding methods in case the scheme is formulated by the Central Government which are

1. Wholly funded by State Government
2. Partly funded by State Government and partly by contributions from beneficiaries or

⁹ The Unorganized Workers' Social Security Act, 2008, § 5, No. 33, Acts of Parliament, 2008 (India).

¹⁰ India Code, https://upload.indiacode.nic.in/showfile?actid=AC_CEN_6_6_00036_200833_1517807327317&type=rule&file_name=uwss_rules_24.02.2009.pdf (last visited Oct. 10, 2023).

¹¹ The Unorganized Workers' Social Security Act, 2008, § 6, No. 33, Acts of Parliament, 2008 (India).

¹² National Domestic Workers' Movement, <https://ndwm.org/social-security-2/> (last visited Oct. 10, 2023).

¹³ Press Information Bureau, <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1564261> (last visited Oct. 10, 2023).

¹⁴ The Unorganized Workers' Social Security Act, 2008, § 4(1), No. 33, Acts of Parliament, 2008 (India).

employers as prescribed.¹⁵

An important aspect to note under these two sections is the sheer lack of legislative understanding and seriousness. Under the third category as per Section 4(1) and second category as per Section 7(1), the word ‘employer’ is mentioned for providing contributions for the scheme. The definition of the term ‘employer/ as per Section 2(a) defines employer as a person or AOP who engages or employer an unorganized worker directly or indirectly for remuneration.¹⁶

In the scenario that prevails in the unorganized sector wherein the entire labor force is scattered, the employers are scattered and are unable to be identified. Rather the main activities that take place in the unorganized sector comprises of primarily small scale loosely held activities such as work in construction sites, home-based work, plumbing shops, grocery shops etc. It is impracticable of the Act to envisage a situation wherein the employer shall be willing to contribute to the schemes enacted by the Central or the State Government. Merely enacting a provision which sounds too good to be true doesn’t serve the purpose of the Act and the larger purpose of uplifting the economic and social status of unorganized workers. The practical reality of the unorganized sector is such that the workers are not able to get adequate wages and even if they get, they do not get them on time. It is so often that we witness that a pregnant woman is working tirelessly in a construction site picking up stacks of bricks on her head. It is not uncommon to see pregnant woman or women undergoing their menstrual cycle tirelessly mopping and brooming the floor of multiple houses and getting meagre wages for the same. In a situation such as these, the Legislature has undoubtedly enacted a futile provision in the Act which is nothing but a tall claim.

c. Concluding terms of the Act

The Act primarily lays down generic provisions and have kept open a wide ambit for the government to formulate policies and schemes with regard to unorganized workers. It is a settled principle by now, with years of experience, that schemes and policies only have a miniscule impact or rather, it plays a small role in bring changing unless it is backed up by a strong intent to implement it. Its not as if all schemes have proved to be obsolete, but history tells us that, a holistic view of the success of schemes enacted by the government conveys a dismal image.

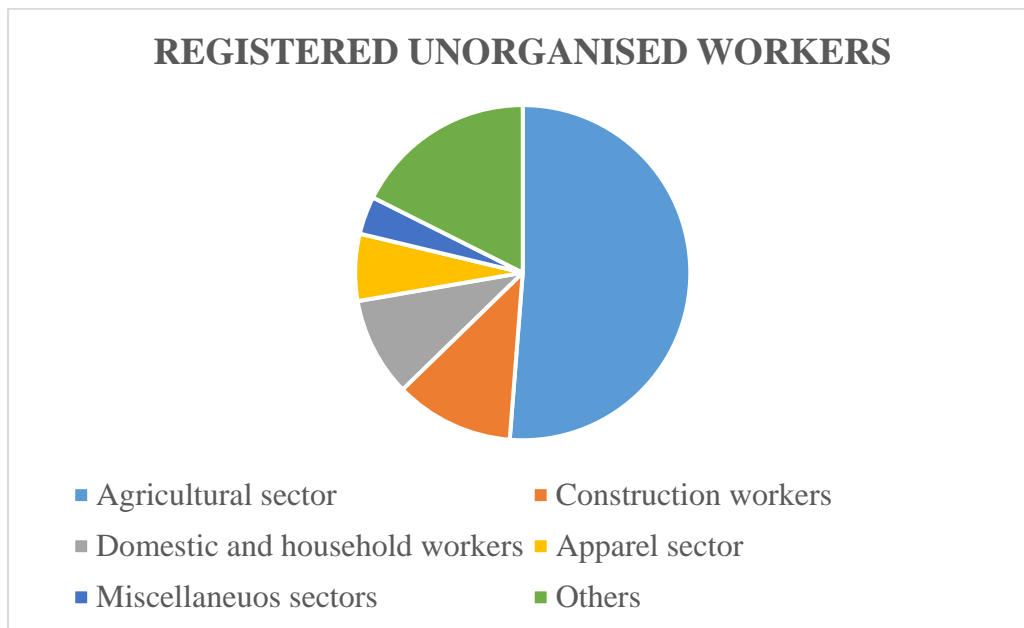
It is necessary that a proper legislation is enacted which caters specifically to the domestic workers in the unorganized sector and which is effective and provides relief, benefits and

¹⁵ The Unorganized Workers’ Social Security Act, 2008, § 7(1), No. 33, Acts of Parliament, 2008 (India).

¹⁶ The Unorganized Workers’ Social Security Act, 2008, § 2(a), No. 33, Acts of Parliament, 2008 (India).

safeguards to domestic workers at large.

III. STATISTICS AND DATA ANALYSIS ESTABLISHING GRAVITY OF THE SITUATION



The diagram portrays a serious image of the existing labor situations in India. As can be seen, Agricultural workers comprise of more than 50% of the informal workforce in India. This is undoubtedly a testament to the fact that India is primarily an agricultural based economy and also justifies the major focus of the government on the agricultural sector. Construction workers, as is visible, also contribute a huge part of the workforce which can be witnessed as India is in an infrastructural boom with a huge upsurge in domestic and foreign investments as well. This upsurge creates a demand of workforce as well.

Apart from Others, the domestic workforms constitutes a major chunk of the workforce which thereby tells its own story. ¹⁷An emerging middle class and rising incomes gives rise to the demand of domestic help and people possess the purchasing power as their income level rises. This trend, I believe, shall rise as Indian economy is booming and focus is given on increasing the purchasing power of people and make India a manufacturing as well as a consumer state. India, being a consumer state, enjoys a plethora of goods and services, the service of domestic employees being one of them.

Regulating and recognizing this major chunk of workforce becomes essential for the society as well as for India's economic pursuits. Foreign Investors keenly observe the labor standards adopted in India and when they send their personnel to India, they want to make sure that decent

¹⁷ Business Line, <https://www.thehindubusinessline.com/data-stories/data-focus/25-of-workers-in-unorganised-sector-registered-on-e-shram-portal/article64817658.ece> (last visited Oct. 10, 2023).

standard of living is provided and for this, regulation of domestic servants becomes essential.

IV. INTERNATIONAL LABOUR ORGANIZATION'S CONVENTIONS: A RAY OF HOPE

The prevailing situation demands that the Indian legislature undertakes immediate steps in order to provide basic facilities, rights and recognition to domestic workers. This materialization has to take effect taking into consideration various facts of the unorganized sector particularly in the domestic workers industry especially their working conditions, wages, benefits etc.

India acquires worldwide recognition and esteem by embracing International Labour Organisation (ILO) conventions, so demonstrating its commitment to universally acknowledged labour norms.¹⁸ This has the potential to bolster the nation's standing in the international arena. ILO agreements often prioritise the safeguarding of employees' rights, guaranteeing equitable treatment, the provision of safe working environments, and the establishment of suitable working schedules. The incorporation of these treaties into domestic legislation has the potential to enhance labour conditions for employees. The establishment of equitable treatment and satisfactory working circumstances for employees has the potential to foster the cultivation of a proficient and robust labour force. Over time, this may make a substantial contribution to the country's human capital. The implementation of fair labour practises has the potential to enhance societal stability via the mitigation of labor-related problems and the fostering of harmonious relationships between employers and workers. The maintenance of stability is crucial for the holistic development of civilization.

Considering the many difficulties encountered by the labour force in India, the adoption of International Labour Organisation (ILO) conventions emerges as an imperative measure that not only has significance but also offers advantages for the comprehensive progress and welfare of the nation. The establishment of a more equitable and compassionate society would contribute to the promotion of economic advancement, social cohesion, and worldwide esteem.

The International Labour Organisation (ILO) Convention on Domestic Workers, sometimes referred to as ILO Convention No. 189, was formally ratified in 2011 as a globally recognised labour norm. This convention is a significant milestone as the first international agreement that particularly addresses the rights of domestic workers.¹⁹

The aforementioned statement serves as evidence of the worldwide dedication to

¹⁸ Human Rights Watch, https://www.hrw.org/sites/default/files/related_material/2013ilo_dw_convention_brochure.pdf (last visited Oct. 10, 2023).

¹⁹ International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 (last visited Oct. 10, 2023).

acknowledging and improving the labour circumstances of domestic workers, a demographic that has traditionally experienced marginalisation and vulnerability. This convention represents a notable advancement in the pursuit of equitable employment and basic rights for domestic workers, as it tackles concerns pertaining to remuneration, working time, social protection, and occupational well-being.

The primary objective of the convention is to enhance the working and living circumstances of domestic workers globally, by ensuring that they are granted equitable labour rights and safeguards comparable to those enjoyed by employees in other sectors²⁰.

There are various provisions under the conventions which provide a strong basis for enacting legislations inspired by it. Some of them are:

Article 1

The Convention in unambiguous terms has defined the term ‘domestic work’ and ‘domestic workmen’. The definition as provided in the Convention is inclusive thereby not restricting its applicability. The Article clearly states a domestic worker to be binded by an employment relationship with the employer. The Article thereby excludes occasional worker and only provides benefit to genuine domestic workmen.

This clear and unequivocal expression and definition has fully served its purpose of avoiding future dispute with regards to the meaning of terms etc which we see in our domestic legislations. The Convention has refrained from adopting a restrictive applicability and has embraced a wide variety of present kind sof domestic workmen and also provides room for inclusion of the kinds of domestic workmen that may arise in the future.²¹

Article 3

It is my humble opinion, that this article is by far, the most crucial article in the convention which primarily rests the debate and issue at rest. The major issues which were revolving around domesticworkers are being adequately and unequivocally addressed in this Article.

The Article speaks about the endeavour of contracting states in enacting legislations based on the Convention and abiding by some fundamental principles and providing certain reliefs and benefits to the domestic workers such as freedom of association and Collective Bargaining, elimination of forced and compulsory labor, abolition of child labor, elimitation of

²⁰ International Labour Organization, https://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@actrav/documents/publication/wcms_181344.pdf (last visited Oct. 10, 2023).

²¹ International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189#A1 (last visited Oct. 10, 2023).

discrimination in employment etc.

The Article provides the domestic workers the right to form and join associations, federations, unions etc for raising their concerns and fulfilling their demands. This is one of the most important and crucial aspect in any labor legislation.²²

(A) Importance of Collective Bargaining for Domestic Workers

- Collective bargaining serves as a symbol of optimism for domestic workers, providing them with a means to achieve empowerment, dignity, and societal advancement. Through the act of forming alliances and engaging in collective bargaining, domestic workers has the ability to question and contest the prevailing norms, assert their entitlements, and establish a working milieu characterised by fairness and justice.
- It is imperative for governments, employers, and society as a whole to acknowledge the significance of collective bargaining in relation to domestic workers, and to actively support their efforts to attain equitable treatment and appropriate remuneration.
- By means of engaging in collective bargaining, it is possible to establish a societal framework wherein the indispensable contributions made by domestic workers are duly recognised, esteemed, and suitably remunerated, so cultivating a fairer and more empathetic global community that benefits all individuals.

(B) Consequences of this Void in India

- The ramifications of this legislative vacuum are severe. Domestic employees encounter systemic barriers that impede their access to equitable remuneration, satisfactory working environments, and legal safeguards against exploitative practises. The absence of collective bargaining reinforces the vulnerability of individuals, so rendering them reliant on the discretion and actions of employers. The normalisation of exploitative practises, extended working hours, and lack of job security deprives individuals of the dignity and respect that they are entitled to.
- In order to address this disparity, it is imperative for India to recognise domestic labour as a legitimate kind of official employment. Legislative changes need to be implemented in order to broaden the scope of collective bargaining rights to include domestic employees, so endowing them with the capacity to engage in negotiations pertaining to equitable remuneration, working hours, and employment benefits.

²² International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189#A3 (last visited Oct. 10, 2023).

Concurrently, it is essential to implement awareness campaigns and educational programmes to effectively disseminate information on the rights of domestic workers and to enable their engagement in unionisation endeavours. It is imperative for political leaders to actively support and promote the interests of domestic workers, by lobbying for the implementation of legislation that safeguard their rights and uphold their dignity.

- Addressing the lack of inclusion of collective bargaining rights for domestic workers inside Indian law is not alone a legal need, but also a moral duty. India has the potential to foster a more just and fair society, characterised by the dignified treatment and respect of all employees, via the recognition of their contributions, the rectification of legislative deficiencies, and the empowerment of domestic workers through collective bargaining.

Article 7

This article encapsulates a major breakthrough in domestic worker's employment conditions. It is a well settled principle of law that clear and unambiguous contractual obligations can prevent a wide range of breach of basic contractual as well as in some cases, human rights. It is an unequivocal fact, that by stipulating clear terms in a contract, parties can decide freely, avoid confusion and can also prevent misuse and abuse on the bargaining power of one party. The dominant party, in general sense, cannot misuse his dominant position by violating his contractual obligations

The article states that the contracting states must endeavour to enact those laws which facilitate the employers and the domestic workers to enter into contractual relationships which undoubtedly shall be a relief and safeguard to domestic workers from exploitation. The contract shall state the wages, the number of paid leaves, the working hours, maternity benefits, menstrual leaves, food and accommodation, type of work to be undertaken etc.

These stipulations are necessary to be clearly mentioned as it is observed that a large number of domestic workers perform certain additional works for which they are not paid and if they are, the pay is inadequate. With the express stipulation of the aforementioned conditions, it shall become beneficial for the domestic worker to enforce the contract.

By establishing a formal contractual relationship, the domestic worker can enforce the contract and seek contractual remedies such as Liquidated Damages, Specific Performance etc. as well.²³

²³ International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189#A7 (last visited Oct. 10, 2023).

V. GLOBAL SCENARIO

(A) United States of America

Similar to several nations, the United States relies significantly on the diligent efforts of domestic employees who perform important tasks inside private residences. Throughout history, domestic workers have been systematically denied access to several labor rights.

The U.S. Domestic Workers Bill of Rights signifies a significant advancement in safeguarding the rights, dignity, and equitable treatment of domestic workers, acknowledging the need for societal transformation.

The U.S. Domestic Workers Bill of Rights has a fundamental element which pertains to the guarantee of equitable remuneration and enhanced labor circumstances. The legislation imposes regulations on minimum pay requirements, ensuring equitable remuneration for domestic employees in recognition of their labor. Furthermore, this policy also tackles concerns pertaining to overtime remuneration, so guaranteeing that domestic employees are properly compensated for the extended periods of labor often required of them.

One notable aspect of the measure is its endorsement of collective bargaining and the establishment of unions within the domestic worker sector. Through the provision of collective organizing and negotiation opportunities, the law successfully enhances the capacity of domestic workers to fight for their rights. The cohesive power of this element enables the amplification of their voices and the earnest consideration of their requests.

The U.S. Domestic Workers Bill of Rights signifies a significant achievement in the pursuit of justice, decency, and equality. Through the rectification of past injustices and the implementation of comprehensive legal safeguards, the law aims to empower domestic workers, enabling them to lead lives that are more secure and meaningful. Furthermore, this landmark decision establishes a significant model for other countries, underscoring the need of acknowledging the immeasurable contributions made by domestic workers and guaranteeing the protection of their rights.²⁴

(B) Germany

Domestic workers assume a crucial role in the operation of homes, providing essential services that facilitate the prosperity of families and communities. In Germany, similar to several other nations, domestic workers have had historical obstacles pertaining to their rights,

²⁴ National Domestic Workers Alliance, <https://www.domesticworkers.org/programs-and-campaigns/developing-policy-solutions/domestic-workers-bill-of-rights/> (last visited Oct. 10, 2023).

acknowledgment, and equitable treatment. Nonetheless, the acceptance of the International Labor Organization (ILO) Convention No. 189 by Germany is a noteworthy achievement in advancing the rights and agency of domestic workers.

The adoption of ILO Convention No. 189 by Germany in 2013 demonstrated a dedication to strengthening the rights and safeguards afforded to domestic workers. Through the act of ratifying the convention, Germany has shown its recognition of the importance of decent work for domestic workers and has made a commitment to harmonize its domestic law with internationally recognized labor standards. The adoption of this agreement served as a catalyst for transformative improvements in the treatment of domestic workers throughout the nation.

The ratification of International Labor Organization (ILO) Convention No. 189 has had a significant influence on the protection and recognition of the rights of domestic workers in Germany. The aforementioned developments resulted in the implementation of legal measures aimed at guaranteeing equitable remuneration, suitable labor durations, and access to social security benefits for domestic employees. Legal recognition and protection have been extended to domestic employees, including various benefits such as sick leave, paid vacation, and safeguards against unjust termination. The agreement also underscored the need of eradicating child labor in the realm of domestic employment, with a particular focus on safeguarding the welfare of young children and preventing their exploitation.

Germany has shown a dedication to advancing fair employment and societal equity for its domestic workforce by harmonizing its laws with global labor norms. Despite the ongoing existence of problems, the advancements achieved so far provide compelling evidence of the significant impact that international treaties have had on molding domestic policy and enhancing the agency of marginalized laborers. Germany's ongoing efforts to confront the remaining obstacles demonstrate its status as a noteworthy exemplar of constructive transformation and advancement in the domain of labor rights for domestic workers.²⁵

VI. THE WAY FORWARD

Now, it is sufficiently established that there exists a deep legislative gap in recognition of domestic workers. It thereby becomes imperative for us to delve into the core aspects of this issue and come up with possible remedies and solutions considering the nature of work and other ancillary factors with regard to domestic workers

There isn't an iota of doubt with the fact that there is a need for a separate legislative enactment

²⁵ International Labour Organization, https://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_221800/lang--en/index.htm (last visited Oct. 10, 2023).

for protection and safeguarding the interests of domestic workers. But it also becomes essential that we do not commit the mistakes of the past by enacting futile provisions and coming up with mere schemes and policies. It is the need of the hour for enactment of a comprehensive legislative enactment on domestic workers.

Some of the key elements to be considered are as follows:

1. Clarity

It is of utmost importance that the legislation clearly defines as to who/what constitutes a 'domestic worker', 'domestic work', 'employer'. It is necessary that the legislations provide for an inclusive definition of these terms with the intent to broaden its ambit. This shall ensure that ambiguity doesn't prevail as is with the definition clauses in legislations such as the Trade Unions Act, Industrial Disputes Act etc.

2. Contractual Relationship

It is essential that a contractual relationship is established which shall ensure non-arbitrariness and non-abusiveness of power favoring the domestic workers. A contractual relationship shall also clearly determine the rights and obligations of the parties and clear terms of employment.

Given the nature of domestic work, serious deliberations are required when it comes to Non-Compete Clause as it is seen that domestic workers shift their place of employment quickly.

A contractual relationship shall also provide for contractual remedies for both the parties. But effective implementation of this is difficult as still, majority of domestic workers in India do not possess the intellectual know-how to enable them to understand the complex terms of their own contract.

3. Collective Bargaining

It is of utmost importance that the legislations provide for an effective mechanism of collective bargaining which shall be a major breakthrough in empowering domestic workers. With the combined force of collective bargaining, domestic workers would be able to raise their concerns and get adequate reliefs and protections.

4. Maternity Benefits, Paid Leaves etc.

It holds vital importance that domestic workers are entitled to paid leaves, maternity and menstrual leaves, proper working hours etc. Given the scattered nature of domestic work and absence of collective bargaining, it becomes nearly impossible to demand for these basic benefits.

5. Legal Aid

It is common knowledge that domestic workers do not have the financial or intellectual capacity to raise disputes before the Court or Tribunal. Hence, it becomes essential that adequate facilities of providing legal aid are put in place.

6. Timely disposal of Disputes

It is important that disputes pertaining to domestic workers are resolved in a time bound manner which shall ensure that they do not have to bear the brunt of the judicial delays etc. domestic workers are working tirelessly for every penny and it is important that the legislature and judiciary take cognizance of this fact and make appropriate provisions enabling the same.

VII. CONCLUSION

By now, it is sufficiently clear that a dedicated legislation is required for protecting and safeguarding domestic workers. Even though there are a multitude of domestic legislations recognizing various types of workers and employees, they fail to recognize domestic workers apart from the mere mention in the Unorganized Workers Social Security Act, 2008.

There have been ILO Conventions and various global examples which have incorporated, recognized, protected and promoted the rights and welfare of domestic workers. They have ensured that domestic workers also enjoy certain key benefits and are working under a just, fair and healthy environment. India, unfortunately, has not yet recognized and moved forward in this direction apart from implementation of certain schemes, there hasn't been a monumental move in this direction.

Hence, this research urges for the enactment of a separate Domestic Workers (Protection and Welfare) Act which incorporate a multitude of important aspects, some of which are abovementioned, which shall ensure that domestic workers enjoy and work in a conducive environment which is their right and also, our duty to provide.
