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Legal Status of Domestic Workers in India: A Labour Law Perspective

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ABSTRACT

Domestic work, a major category of informal labor in India, has been one of the most overlooked sectors in legal matters. Domestic workers, due to their integration in the private sphere, fall outside the coverage of labor laws, even though they are essential to the urban and semi-urban economies. This article seeks to examine the legal status of domestic workers through a labor law lens and the challenges these workers encounter due to their presence in the informal and unregulated sector. Topics such as the lack of set work hours, ineffective enforcement of minimum wage laws, limited access to social security benefits, and the risk of exploitation and abuse will be addressed. The research analyzes the existing legal structure, focusing on the deficiencies of the Unorganised Workers' Social Security Act, 2008, and the continued exclusion of domestic workers from important labor regulations like the Industrial Disputes Act and the Minimum Wages Act. The article also explores the disparity between the constitutional rights to dignity and livelihood under Article 21 and the actual circumstances encountered by domestic workers. This has highlighted the gap between the constitutional clauses and the real situation. The paper also seeks to position the Indian situation within the wider framework of the global labor context by examining international labor standards relating to the domestic worker sector. Ultimately, the paper asserts that the current approach to addressing the situation of domestic workers in India is insufficient and suggests creating a national law that acknowledges the domestic worker's status as a worker and the home as a place of employment.

Keywords: Domestic Workers, Informal Labour, Labour Law, Legal Protection, Unorganised Sector, Social Security, Minimum Wages, Working Conditions, Exploitation, Abuse, Unorganised Workers' Social Security Act, 2008, Industrial Disputes Act, 1947, Minimum Wages Act, 1948, Constitutional Rights, Article 21, International Labour Standards, Domestic Work Regulation, Legal Reform

I. INTRODUCTION: THE INVISIBLE BACKBONES OF INDIAN HOUSEHOLDS

Domestic labor ranks amongst the most significant but least recognized forms of labor in India.

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Residential workers in urban, semi-urban, and rural households across the nation perform various essential tasks such as cleaning, cooking, childcare, and providing care for the elderly and disabled individuals. This is crucial for the effective operation of households in the nation, thus creating a positive economic effect on the country via the financial empowerment of members of the employed households, particularly the women. Despite the importance and impact of the work done by them, domestic workers remain largely invisible in the social and legal spheres. The obscurity of domestic workers can be seen as resulting not only from their socio-economic position but also from their work environment. Unlike workers in factories, offices, or business establishments, domestic workers are part of the private sphere within homes.

This particular aspect of their work environment has traditionally shielded domestic work from regulatory control, hence the absence of domestic work in most labor laws. Domestic workers are therefore seen as having a contradictory position in the Indian labor market: while they are vital for survival, they are denied the most basic forms of protection enjoyed by other categories of workers. Furthermore, domestic workers mainly originate from marginalized segments of society, including women, migrant workers, and those from economically disadvantaged backgrounds. The interaction of these factors results in their vulnerability and inability to assert their rights as workers.

The absence of official employment contracts, salary frameworks, and social security systems increases their risk as domestic workers. Over the past few years, there has been a recognition of the concept of informal work and increased discussion on labor regulations. This has resulted in a greater awareness of the challenges faced by domestic workers. However, there are still many areas where there is a lack of recognition and implementation. This article aims to thoroughly discuss and analyze the position of domestic workers in India in terms of labor law. It will discuss the social aspects of domestic work, analyze the limitations in the current law, and discuss why these workers are still not recognized as part of normal labor laws. It will promote a change in the current scenario based on India's position on a global scale.

II. SOCIOLOGICAL REALITIES OF DOMESTIC WORK

Informality and lack of Standardized Conditions:

Domestic work in India is highly integrated into socio, cultural and economic systems, which have its roots deepened on how this labour is treated. Most domestic work is carried out by women, and most of these women are from marginalized communities. This intersecting vulnerability highly affects the conditions surrounding domestic work and the extent to which

workers can obtain legal safeguards². One of the notable features of household work is the absence of uniform employment standards. This is unlike formal employment, whose terms and conditions of employment are clearly stated in employment contracts and are governed by legislation. In household employment, individual workers are often required to negotiate their terms of employment, resulting in significant variations in terms of wages and work environments. leading to significant differences in terms of wages and working environments. This informal nature of household work creates an environment conducive for exploitation, as workers do not have the full force of the law on their side³.

Working Conditions:

The issue of work hours is particularly significant. Domestic workers frequently endure long and irregular hours, usually without additional compensation. For live-in employees, the boundaries between work and personal time are mostly blurred, resulting in a form of labor that is constant and all-encompassing. Part-time workers, who often serve different households, commonly face excessive workloads due to the cumulative demands from several employers⁴. The next major aspect is the lack of dignity and recognition associated with household labor. Social perceptions have shown that domestic work is an extension of regular household work and not recognized as a source of employment. This is one major reason why the value of work is not recognized and thus leads to the normalization of exploitative practices.

Cases have been reported by domestic workers where they have been subjected to verbal and physical abuse. In the case of *People's Union for Democratic Rights v. Union of India*⁵, the Supreme Court highlighted the exploitation of labor, despite it being informal, is a violation and not justifiable based on constitutional protection. Although this case is not specific to household workers, the general implication is that there is a need to understand and address the exploitation of labor.

Lack of Accountability:

The domestic nature of work is complex. The household, as a place of work, is mostly beyond the reach of regulatory bodies, posing challenges for overseeing working conditions or applying labor standards. This absence of supervision fosters an environment where breaches of workers' rights may happen with minimal consequences. Additionally, the lack of formal grievance resolution mechanisms suggests the reality that workers in private homes are in situations where

² Neetha N., *Regulating Domestic Work*, 42 *Econ.& Pol. Wkly.* 26,27 (2007)

³ Shalini Sinha, *Domestic Workers and the Law in India: A critical Analysis*, 7 *Indian J. Lab.Econ.* 45,48 (2014)

⁴ International Labour Organization, *Decent Work for Domestic Workers* 12 (2010)

⁵ *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235 (India).

they have no alternative in the event of conflicts⁶.

In the case of *Vishaka v. State of Rajasthan*⁷, it was acknowledged by the Supreme Court that it is imperative for workers to have a safe environment at the workplace, which is an integral part of the right to life and human dignity as enshrined in Article 21. Although it was intended for cases of sexual harassment at work, it is relevant to domestic workers as well, as there is no regulatory framework for work environments. Another aspect of the sociological implications of household work involves the considerable level of dependency and power inequality present in the employer-employee relationship. The domestic worker tends to be dependent on a few employers for their income.

This leads to the situation where the worker does not like to raise their concerns or demands for better conditions of work. The fear of immediate dismissal and lack of alternative employment options makes the worker more prone to this situation⁸. The Supreme Court has emphasized the role of the State in recognizing and eliminating the exploitative conditions of work in the decision in *Bandhua Mukti Morcha v. Union of India*⁹.

This has special implications in the context of domestic workers who tend to be ignored in the system. This has a considerable impact on the experience of domestic workers. Most migrant workers from the rural areas migrate to the urban areas in search of jobs. They lack the social support system and are not aware of their rights¹⁰. This makes them vulnerable to exploitation without the help of recruitment agencies. The lack of legal regulation for these intermediaries increases the susceptibility of migrant domestic workers. A major issue is the absence of social mobility in the field. Household labor is often marked by low pay and few chances for skill enhancement or advancement, leading to prolonged economic stagnation. This strengthens the view of domestic work as low-status labor and continues to uphold existing social hierarchies.

The informal nature of domestic work is likely to exclude domestic workers from other forms of social protection. In times of illness or economic hardship, domestic workers have no social protection and are thus likely to be caught off guard by any new challenge. These are some of the sociological realities that, if examined alongside constitutional and judicial realities, suggest that the problems experienced by domestic workers are not just legal but structural. If the structural issues are not addressed, legal reforms may not be enough to provide significant

⁶ K. Gopalakrishnan, *Unorganized Labour and Legal Protection in India*, 50 J. Indian L. Inst. 213, 220 (2008).

⁷ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

⁸ S.C. Srivastava, *Industrial Relations and Labour Laws* 112 (6th edition 2012).

⁹ *Bandhura Mukthi Morcha v. Union of India*, (1984) 3 SCC 161 (India).

¹⁰ National Commission for Enterprises in the Unorganised Sector, *Report on Informal Employment* (2009), <http://dcmsme.gov.in>

protection to domestic workers¹¹.

III. CURRENT LEGAL STRUCTURE AND SAFEGUARDS

Fragmented Statutory Recognition:

The legal structure regulating domestic workers in India is marked by division and insufficiency. Although there isn't any extensive central legislation directly targeting domestic work, some laws and policies offer restricted protection to individuals in the informal sector¹². The Unorganised Workers' Social Security Act, 2008¹³ signifies a major effort to provide social security advantages to individuals employed outside the formal sector, such as domestic workers. The Act identifies the development of welfare schemes in terms of life and disability insurance, health and maternity protection, and protection of the elderly. Nevertheless, the success of this legislation has been hindered by challenges in its implementation, including lack of awareness among employees and difficulties in its application¹⁴.

At the state level, certain governments have acted to acknowledge domestic labor as part of labor regulations. For example, various states have incorporated domestic workers in Minimum Wages Act, 1948¹⁵, thus setting a wage baseline. Although these measures are praiseworthy, they vary across states, leading to differing levels of protection for domestic workers based on their region. In addition to the wage regulations, the state has established welfare boards and initiatives geared towards the provision of social security benefits to the domestic workers¹⁶.

Exclusion from Core Labour Legislations:

The initiatives include the provision of health benefits, financial benefits, as well as training. However, the effectiveness of these initiatives has been obstructed by the lack of necessary and basic financial resources as well as the proper approach in implementing these initiatives. Despite the various initiatives by the government for protecting the rights of the domestic workers, they are not covered by any major legislations like the Industrial Disputes Act of 1947¹⁷ or the Factories Act of 1948¹⁸. The lack of protection under these basic laws is significant in terms of its implications for the protection of the rights of domestic workers. For example, there is no redressal for cases of wrongful dismissal of workers or for cases involving salary

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¹² K. Gopalakrishnan, Unorganized Labour and Legal Protection in India, 50 J. Indian L. Inst. 213, 215 (2008)

¹³ Unorganized Workers Social Security Act, NO. 33 of 2008, India Code (2008).

¹⁴ Shalini Sinha, Domestic Workers and the law in India: A Critical Analysis, 7 Indian J. Lab. Econ. 45, 52 (2014).

¹⁵ Minimum Wages Act, No. 11 of 1948, India Code (1948).

¹⁶ Neetha N., Regulating Domestic Work, 42 Econ. & pol. Wkly. 26, 29 (2007).

¹⁷ Industrial Disputes Act, No. 14 of 1947, India Code (1947).

¹⁸ Factories Act, No. 63 of 1948, India Code (1948).

payments under the Industrial Disputes Act. Similarly, there is no application of the provisions of the Factories Act for the enforcement of the conditions of employment for domestic workers. The lack of a comprehensive set of laws for the protection of the rights of domestic workers is indicative of a broader failing in the Indian labor law framework. This is because, despite the significant strides in the management of employment relations in the formal sector, the informal sector has not been adequately addressed. This shows the need for the incorporation of a more holistic approach in the formulation of Indian labor laws.

IV. PARADOX OF LABOUR LAW AND EXCLUSION FROM THE LEGAL SYSTEM

The non-inclusion of domestic workers from standard labor laws highlights a fundamental inconsistency within the Indian legal system. Labor laws mainly exist to shield workers from exploitation and ensure fair working conditions, yet their effects are often limited by restrictive and outdated conditions¹⁹.

As per the Industrial Disputes Act of 1947, the law's enforcement heavily relies on the existence of an "industry." Judicial interpretations have generally excluded private residences from this definition, consequently denying domestic workers for the protections provided by the Act. This encompasses the ability to pursue solutions for unjust dismissal, salary conflicts, and various work-related matters²⁰.

In the same way, the Factories Act of 1948 pertains exclusively to businesses involved in manufacturing activities. Because household labor does not pertain to industrial manufacturing, it is excluded from the purview of this law. Consequently, domestic employees lack access to protections concerning working hours, workplace safety, or health regulations that factory workers receive²¹.

V. CONCEPTUAL AND STRUCTURAL GAPS IN LABOUR LAW

This legal structure illustrates an industry-focused perspective on labor law that does not recognize the conditions of informal and domestic employment. In a nation where a large segment of the labor force works in the informal sector, this method is becoming less sufficient²².

The contradiction exists in that domestic workers engage in labor that holds both economic worth and social importance, yet they are not acknowledged as workers in the complete legal

¹⁹ Surya Narayan Misra, *A Introduction to Labour and Industrial Law* 78 (2018).

²⁰ Industrial Disputes Act, No. 14 of 1947, India Code (1947).

²¹ Factories Act, No. 63 of 1948, India Code (1948).

²² Ravi Srivastava, *Labour in the Informal Economy*, Int'l Lab. Org. Working Paper (2016)

context. This leads to a “legal void” where domestic workers lack essential rights and safeguards. The lack of legal acknowledgment restricts their capacity to unite and fight for their rights, continuing their marginalization

Resolving this paradox necessitates a reevaluation of critical legal terms like “worker,” “sector,” and “employment environment.” By broadening these definitions to encompass domestic work, it would become feasible to extend labor law protections to this vulnerable sector of the workforce.

A further aspect of this paradox can be seen in the varying judicial stance on informal work. Although courts have, in some situations, embraced a broad interpretation of labor rights to promote social justice, domestic workers have primarily been excluded from this advancing progress. The hesitation to label households as “industries” highlights a more profound conflict between safeguarding labor rights and maintaining the private domain. This has led to a scenario in which the workplace itself forms the foundation for exclusion, instead of the type of work carried out²³.

Moreover, the lack of a defined employer-employee relationship in domestic work makes it difficult to enforce labor laws. In contrast to formal organizations where the employer is a legal entity, domestic work typically features personalized and casual agreements. The lack of formalization results in ambiguity regarding liability and accountability, consequently weakening the effectiveness of legal protections. Consequently, domestic workers do not have access to the institutional resources usually available to employees in structured sectors.

Another significant concern is the restricted relevance of new labor laws in India. Despite recent updates to labor laws intended to improve and update current regulations, the effect on domestic workers is still unclear. The ongoing dependence on conventional definitions and structures threatens to continue the exclusion of domestic work from labor protection safeguards. This emphasizes the importance of clear inclusion instead of implied or presumed coverage²⁴.

Moreover, the marginalization of domestic workers has an impact on the general concept of legal equality. The legal system unintentionally promotes inequality in the system by limiting the access of a certain group of workers to basic human rights. Therefore, the solution to this paradox involves the application of both labor law and the general concepts of justice and equality in the constitution.

²³ Anamitra Roychowdhury, *Domestic Workers in India: Issues and Challenges*, V.V. Giri Nat'l Lab. Inst'l Paper (2015).

²⁴ Upendra Baxi, *The Future of Human Rights* 102 (3 ed. 2008).

VI. GLOBAL STANDARDS AND COMPARATIVE OUTLOOK

The recognition of household work as a job has gained a lot of support worldwide. The International Labour Organization played a role by adopting the Domestic Workers Convention in 2011²⁵. This convention sets out rules for good work in the domestic sector including fair pay, reasonable working hours, social security and protection from abuse.

Many countries have started to match their laws with these standards. For example the Philippines introduced laws that set wages require employment contracts and provide social security benefits for domestic workers. South Africa also expanded protections for domestic workers by including them in its labour laws²⁶.

On the hand India has not yet agreed to the convention showing a cautious approach to international commitments in this area. Although some rules of the convention are in our policies we have not formally adopted them. This shows a gap, between standards and how we implement them in India.

This gap tells us that we need to change our approach. We should think about making a legal framework that matches the best international practices. The convention and international standards are important. India should try to match them. This strategy would not improve the protection of domestic workers but also strengthen India's commitment, to global labour standards²⁷.

VII. SUGGESTIONS & FUTURE DIRECTIONS

Domestic workers need to be treated and their rights need to be protected. To do this we need to make sure that the institutions that are supposed to help them are working properly. One way to do this is to create boards that look out for domestic workers. These Domestic Worker Welfare Boards can be set up at the state levels. They can help register workers and their employers make sure that everyone is following the labor laws and provide access to programs that can help them.

We also need to make it easy for domestic workers to report any problems they are having. Sometimes domestic workers are treated badly. Domestic workers have a hard time. They don't know where to seek help. We can create a safe anonymous helpline centre for them to talk about their grievances. Domestic workers need to feel safe when they are reporting problems about

²⁵ Convention Concerning Decent Work for Domestic Workers (No. 189), JUNE 16, 2011, Int'l Lab. Org.

²⁶ Republic Act No. 10361, Domestic Workers Act (Philippines, 2013)

²⁷ Int'l Labour Org., Domestic Workers Across the World: Global and Regional Statistics 45 (2013).

work.

Many domestic workers do not know what their rights as domestic workers are. They also do not know what help is available to workers. We need to educate workers about their rights and the programs that can help domestic workers. The government and other organizations can work together to teach workers about their rights as domestic workers. We also need to teach employers how to treat workers fairly and with respect. This can help solve problems, from both sides the workers and the employers.

We can help domestic workers form groups where they can speak with their employers about the way domestic workers are treated and what domestic workers want to see changed for workers.

This means domestic workers get to have a say in what happens to them.

Domestic workers can then work in a place and get paid fairly for what they do as domestic workers. Groups of workers can work with their bosses to find answers to problems that domestic workers face.

Domestic workers should be able to go to their job every day without someone being mean, to them or taking advantage of them as domestic workers.

When we support them , they can achieve what they want for domestic workers. This can be hard to do because domestic workers are often scattered and work alone. We should find ways to make it work.

The work they do is just as important as any kind of work. Domestic work is, like any other job. We need to change how we think about it. Labor laws should protect workers. They do a lot of work, and they Deserve respect and fairness. Domestic workers need our help to get the support and protection they deserve. We need to think about working as part of the labor market. Domestic workers deserve to be treated better.

VIII. CONCLUSION

Domestic workers are a part of India's labor force. People often forget about domestic workers. Domestic workers work in a system that's not formal and domestic workers do not get the recognition that domestic workers deserve. They also do not have the rights as other workers.

Domestic workers play an important role in homes and in the whole economy. Even with this important role they do not have enough protection under the current laws that govern work.

The laws that we have now do not see work as a real job. We have to make a change by thinking

of workers as people who have rights just like everyone else. Domestic workers are a part of the workforce they do jobs.

We need to make changes to the pertaining laws and also to teach and make people aware about the rights they have as a domestic worker. The common people should also be taught about how the domestic workers are to be treated, whomsoever it maybe. This will help workers and make the system fair for everyone, in India. Domestic workers will have lives and India will have a more fair labor system.

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