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Myths and Misconception of Domestic Workers - A Global Issue with Special Reference to Adverse Conditions of Domestic Workers in India

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ABSTRACT

The domestic workers in India, besides across the nations, play a vital role in the overall workforce. In India, due to wanting effective statutes, the rights and duties of the employers and employees relationship are stranded. The present Acts and poor implementation of ILO Convention.no.189 and ineffective National Policies do not give meaningful life to the domestic workers. Domestic work becomes more vulnerable to the workers both physically and mentally. Also, it abrogates their right to a decent job that has to be guaranteed by effective statutes and sound adjudicatory mechanisms. The unorganised workers shall have all the social safety and security and other welfare measures the same already enjoyed by the labours employed under the formal sector. The access to justice by the individuals in the Court of Law is not viable for domestic workers when there is no legislation to govern their rights and a forum to redress their issues faced at the workplace. The implementation of the National Policy on Domestic Workers and Domestic Workers Bill, 2010, will pave the way to secure the rights of household workers and will give all the social security benefits.

I. INTRODUCTION

The domestic workers in India and around the globe play a crucial role as employees without proper legal protection compared to the other forms of labour. Labour rights are human rights, whether the rights of the domestic workers are preserved and protected by the legal institutions. Are the governments sheltered the domestic workers with any appropriate policy decisions? The pressing need to preserve their dignity and rights through a human-centric and right-based approach is the need of the hour. The ambiguous language of the words domestic workers establishes the difference between the labours under the formal and informal sectors. The lack

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of or bare government policies and legislations for domestic workers' safety and security categorised them under the informal sector.

The livelihood of the labours under formal sectors is guaranteed several rights and benefits. The employers of formal and informal sectors govern with various moral and legal obligations towards their employees. In the formal sector, the employer has to abide by numerous social security measures for the industry's harmonious environment and employees. The picture is different in the informal sector, especially in domestic work the workplace is in the employers' home with minimal legal obligation, exploiting the domestic workers' sweat. This different treatment depicts the domestic workers' abuse in their workplace. In India, the remedy flows from the rule of law, which supports and defends the workers' rights under the formal sector.

Are the rulers of the nation aware of this fact? Is there any remedy available to the domestic workers? The domain of the labour laws in India chiefly revolves around the labours under the formal sector. The abasement of the rights and dignity of the domestic workers are visible. But the society at large does not ready to put the lens to recognise them as humans instead, kept them in the dark and made them invisible. The abuser is free from any legal obligations. The sabotage of the dignity of the domestic workers is nothing but a modern form of slavery. Also, the employers of the household work do not have any legal bindingness with their domestic workers. Thus, in turn, it allows employers to ill-treat them with zero liability.

Why are the domestic workers addressed as vulnerable groups? The nature of domestic work does not have a uniform pattern. Also, the statistical report shows the women and children below the poverty line is the primary workforces in this field.³ They do all the household chores, including cleaning the house, gardening, cooking, vessel washing, washing the clothes, going to the marketplace, and taking care of the babies and old age people, and the list is not exhaustive. If a domestic worker has to work peacefully in the workplace, it is in the employer's hands. Hence, the human rights violations of the domestic workers became invisible.

Across the globe, societies are structured as male-dominated, also a reason for women to confine themselves to domestic work. The State has failed to shelter the workers in keeping their legal rights and the benefits through appropriate legislation and adjudicatory mechanisms. For this reason, the workers have to depend upon the employer for a better salary, working conditions, and etcetera. The workers' dependency upon the employer eventually causes them

³International Labour Organisation (ILO), (2013), *Domestic workers across the world: Global and regional statistics and the extent of legal protection*. Geneva: ILO (Aug 16, 2021), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf.

to subjugate their moral and legal rights, become vulnerable groups, and be exploited both physiologically and psychologically. Furthermore, the employer classifies the workers based on caste and religion, resulting in employment discrimination. Discrimination gives a choice to the employer to choose what people have to do, what works, and what kind of work.⁴

The present legislations in India are not enough to give justice to the human rights violations in domestic work.⁵ The Unorganised Workers Social Security Act, 2008 (UWSS) is the first piece of legislation with few social security measures for unorganized workers, including domestic work.⁶ Meanwhile, the International Labour Organisation⁷ (ILO) realised the significance of promoting decent work, employment indiscriminate, and etcetera. The ILO kept in mind adopted Domestic Workers Convention.No.189⁸ in 2011. The irony of this ILO Convention.No.189 and the ineffective participation of the Government of India are visible. India is a member country of ILO since 1919 and ratified so many important conventions and implemented in its land through effective legislation. But it took a different position and was hesitant to provide proper legislative measures for the welfare of the domestic workers. The definition of domestic worker followed by Article 1 of the ILO Convention.No.189, the Government of India gave a comprehensive definition in the Sexual Harassment of Women at Workplace Act, 2013 (SHWW).⁹ Yet, there is inadequacy and a gap in providing social security and safety measures to domestic workers, primarily women.¹⁰

In this backdrop, the authors try to portray the hue and cry of the domestic workers from the legal rights perspective and the rights-based approach. To prevent the human rights violations to the workers to seek a remedy through apt national legislations and conventions govern in the realm of International Labour Law (ILL). Thus it ignites the notion of access to justice by the domestic workers, and it warrants the Government of India to establish a proper redressal mechanism to uphold the justice. This paper deals with the conceptualisation of problems of domestic work from a human rights perspective. It speaks about the myths and misconceptions of the domestic workers and its remedy. Also, addresses the access to justice by the domestic workers and to find a remedy if any is left. Briefly discusses the transition from rule of law to

⁴UPASANA MAHANTA & INDRANATH GUPTA, RECOGNITION OF THE RIGHTS OF DOMESTIC WORKERS IN INDIA CHALLENGES AND THE WAY FORWARD 1 (2019) (ebook).

⁵*Id.* at 2.

⁶Unorganised Workers Social Security Act, 2008, § 3, No.33, Acts of Parliament, 2008 (India).

⁷HISTORY OF ILO (Aug 14, 2021), <https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>.

⁸Convention C189 - Domestic Workers Convention, 2011 (No.189) (Aug 14, 2021), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:2551460:NO.

⁹The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2, No.14, 2013 (India).

¹⁰UPASANA MAHANTA, *supra note 2*, at 3.

rule of life, a solution-based approach to the welfare of domestic workers. It is an attempt to showcase the workers' pain they undergo.

II. MYTHS AND MISCONCEPTION OF THE DOMESTIC WORK

In general, there are few erroneous perceptions of domestic work in society. Since the workplace of the domestic workers is mainly at the employers' house. The employer denies the domestic workers' tasks because the family members also do the same chores. Are the domestic workers treated on par with the family members? Even affirmative in some instances does not change the fact that domestic workers are workers under an employer-employee relationship. The above point is a myth and not recognising the service rendered in the household work. It has to uproot with the present laws and policies.

The domestic workers in India, to an extent, elevated to the position of workers.¹¹ Under Section-3 (1) of the UWSS and through welfare policies, namely, Janshree Bima Yojana, Aam Admi Bima Yojana, Rashtriya Swasthya Bima Yojana, and so on. The central and state government provides life cover, health, maternity, and old age protection. Whether the policies made are effective? Is the welfare schemes reach the domestic workers? Are domestic workers become the beneficiaries of these welfare schemes? To protect the labours of domestic work, the Ministry of Labour and Employment in 2009 set up a task force on domestic workers. The Task Force on Domestic Workers (TFDW) in 2011 submitted its final report to the government with a recommendation to establish National Policy on Domestic Workers (NPDW) to regulate minimum wages, leaves, and other social security measures.¹² It held the present laws and policies are not good enough to recognise domestic work as work. It establishes the government's stand on the poor implementation of ILO Convention.No.189 and not sticking to the recommendations of the Committee of the Task Force.

Another false impression over the domestic workers does a variety of works with due recognition. Indeed, it is a myth the workers are with zero recognition. The job not only confining to cooking and washing but also extends to good communication and management skills to maintain prosperous human relations. The patriarchic societies bring up the female children forced to learn and do most of the domestic works from their childhood.¹³ Also, the

¹¹The Sexual Harassment of Women at Workplace, *supra* note 7, § 2(e).

¹² Ministry of Labour and Employment, (2011), *Final Report of the Task Force on Domestic Workers Realising Decent Work*, Government of India (Aug 18, 2021), <http://nidan.in/nidanwp/wp-content/uploads/2014/07/Final-Report-of-the-Task-Force-On-Domestic-Workers.pdf>.

¹³Policy Brief (ILO), (2019), *Common Myths and Facts About Domestic Work* (Aug 16, 2021), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_617232.pdf.

incorrect conception holds that the right to skill development does not apply to domestic work because it is part and parcel of the duty of the women to do household works. This approach is again an important reason for the non-recognition of the rights of domestic workers. The TFDW in its report clearly laid down the fact and emphasised giving due recognition to the domestic workers through appropriate national policies for their upliftment.¹⁴ It also underlines the need for suitable measures to provide certified skill development courses to domestic workers.

Across the nations, especially countries like India, Nepal, Bangladesh, Lebanon, and Gulf Countries do not have laws or policies regarding the right to freedom of association to the domestic workers.¹⁵ There is no redressal forum to address their grievances. The employer-worker relationship will get affected if there is no freedom of association. Thus, the bargaining power of the workers falls down in voicing their everyday issues and challenges. The lack of right to freedom of association and collective bargaining destroys the ILOs' foundational *Principle of Tripartism* in adopting the conventions.

The labours also face other challenges like registration of the employers and employees through proper legislation or policies. The records also have to be adequately maintained by the Department of Labour. In India under Section-10 of the UWSS speaks about the registration of the unorganised workers. But the language of the legislation itself is not clear about the domestic workers' registration because there is no clear-cut definition of the domestic workers in the UWSS. The definition of 'unorganised workers' under Section-2(m) of the UWSS is not inclusive of domestic work.

Moreover, the major drawback of UWSS is the inclusion of Schedule II read with Section-2(m). The Schedule II read with Section-2(m) prevents unorganised workers getting benefits from significant labour legislations. Namely, Employees's Compensation Act, 1923; Industrial Disputes Act, 1947; Employees State Insurance Act, 1948; Employees Provident Funds and Miscellaneous Provisions Act, 1952; Maternity Benefit Act, 1961; Payment of Gratuity Act, 1972.¹⁶

Later, the SHWW defined the domestic workers under Section-2(e). But, the SHWW aims to protect women against sexual harassment at the workplace. However, it is silent in other social security and welfare measures. The SHWW was enacted and came into force in 2013 based on the International legal instrument, namely the Convention on the Elimination of all Forms of

¹⁴ Ministry of Labour and Employment, *supra note 10*, at 14.

¹⁵ Policy Brief (ILO), *supra note 11*, at 3.

¹⁶ Unorganised Workers Social Security Act, *supra note 4*, at 9.

Discrimination against Women (CEDAW) adopted by the United Nations (UN) in 1979. India is a member country of the UN since 1945. But the Government of India ratified the CEDAW in the year 1993. It took almost two decades to bring the SHWW. The lack of timely legislation or poor implementation of laws and policies takes the rights and lives of the stakeholders.

III. RIGHT TO ACCESS TO JUSTICE OF THE DOMESTIC WORKERS

The TFDW in its report, recommended the immediate need for the establishment of the National Policy on Domestic Workers. The Ministry of Labour and Employment, India, in its press release 2019, stated that the Central Government has yet to enact a special law for the interest of the domestic workers.¹⁷ Also, the NPDW is still in the drafting stage, which includes separate legislation that governs domestic work. If this national policy comes to effect, domestic workers will get the right to register under unorganised workers to get maximum benefits. They will also get a catena of rights, namely, the right to form the association, the right to form unions, the right to minimum wages, and the right to enhance their skills. The workers will also get protection from abuse and misuse of their work. Most importantly, the workers will get a vital right to access courts, tribunals to address their grievances, and so on.¹⁸

The sufferings are crystal clear, and no remedy with poor laws and policies to the domestic workers in India. The right to access justice in the Courts of Law is not viable when it lacks apt legislation. The victims may get reparation that too under severe limitations. Because the UWSS is purely dealing with social security matters and the SHWW under Sections-4 and 5 have Internal and Local Complaints Committee to receive complaints against sexual harassment. The domestic worker as an individual and a victim has to submit a complaint to these committees. However, Section-11(1) of SHWW speaks of punishment takes a neutral stand for the protection of the employer under Section-14 for false complaints. This provision gives an upper hand to the employers to threaten and weaken the victim of domestic work. But a dark shadow cannot provide to Section-14, in few instances, genuine cases where the employers get cheated by their workers. But most of the time, the employer has diluted the case by bribing the authorities or threatening the victims. To end this kind of abuse, the Government of India must develop stringent rules against the misuse of domestic workers. Also, bring a special court at the national level or a court with jurisdiction to deal with the human rights violations of the domestic workers through a specific statute. To this matter, the Government

¹⁷Press Information Bureau, (2019), *National Policy on Domestic Workers*, Government of India (Aug 18, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1564261>.

¹⁸*Id.* at vii.

of India has yet to bring the Draft Domestic Workers Welfare and Social Security Bill, 2010, and the Draft NPDW to eradicate the challenges faced by domestic workers in day-to-day life.

IV. SOLUTION-BASED APPROACH TO THE DOMESTIC WORKERS

The findings of the TFDW and other non-State actors, namely, non-governmental organisations, social activists, have yet to be implemented by the Indian Ministry of Labour and Employment. In recent years, the debate related to the domestic work showed that conventional ways of handling domestic workers are not adequate to deal with the challenges. The variety of steps taken by the Government of India lacks the workers' demand for domestic work. To date, domestic workers are facing hefty tasks with low or nil wages. The identification of domestic workers is another task for the government authorities. The labour inspectors cannot knock on each door and inspect. It brings unnecessary chaos from the employers who say inspection affects their right to privacy. The only solution is that a proper registration of employers and employees would facilitate the authorities in the fact-finding process.

Moreover, India pursues the *Principle of Unity in Diversity* does have various cultures, castes, religions. These factors determine the nature of household work to give to the person who belongs to a particular community. Our nation has to take active measures for the welfare of the domestic workers with thorough recognition and guarantee their fundamental rights. The human rights and value-based approach underline the misuse and exploitation of women and children in domestic work. The laws without morals, values cannot achieve the goals. The social welfare legislation must give preference to the dignity of labours and human relations than procedural aspects. The positive law gives importance to verifiability rather than the validity of human rights.

In other words, the positive law looks for evidence from the existing rules and will not look into the real suffering of the vulnerable groups in domestic work. The role of the domestic workers in the labour market becomes significant because of the fact of guaranteed employment with definite wages. Domestic work is still considered to be devaluated and the distresses of the domestic workers become inconspicuous. The women and children are the employees in the household work. They are by and large migrants from other parts of our nation or a member of destitute society. The immediate employment and quick money compel them to sacrifice their moral rights and duties and put themselves on the list of vulnerable groups.¹⁹

¹⁹See Preamble of Convention C189, *supra note* 6.

The workers in any field must get their due recognition as humans. According to rule of life, their basic right to the wages or remuneration or salary must be fixed properly by the government. The workers should not be overloaded that affects their health and reduce the efficiency in the given task. Later, the same will be quoted as a reason and expel them from their employment by the employer. The right to rest is more significant than the right to wages and related rights. In domestic work, though employed in different categories of a task, the workers should be treated as humans first and next viewed as workers. Whether societies will outcast the concept of inequality? When treating humans as human without compromising the rightful work, it will bring harmony in the human community.

V. CONCLUSION

The labour rights are human rights, but if it is not recognised properly at the root level. Later, it may become a threat to the international community's peace because the rulers of the nations are playing with the inherent dignity of the humans. The recommended thing is to implement the International Labour Standards through appropriate legislation and policy to overcome the current situation with domestic workers. Even after Seventy Five years of Independence of our nation with an effective and mammoth Constitution guarantees the citizens of India all fundamental rights.

The Constitution of India under Article-47 mandates the Central and State governments to raise the standard of living of their citizens. It also guarantees its citizens under Article-19(1)(c) to form associations or unions to represent their grievances or demands the implementation of welfare schemes. This paper envisions the non-implementation of the international labour standards and the recommendations of the TFDW. The usage of obsolete legislation to find a solution to existing problems is not a solution at all. The Government of India must come forward with specific statutes and policies with the *Principle of Accommodation* to prevent the exploitation of domestic workers.
