



A CRITICAL ANALYSIS ON THE PROTECTION OF RIGHTS OF DOMESTIC WORKERS: A STUDY WITH REFERENCE TO INDIA.

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Abstract : Domestic work is a type of unorganized sector work and it is one of the largest sectors of work in an urban areas. Majority of workers working in domestic work are women and it is an important source of employment for poor families and migrant workers, who come for livelihood opportunities. As per the Government data, it is estimated approximately 4.75 millions are domestic workers, but ILO estimated nearly 20 million. On the other hand labour unions and workers were estimated 50 to 90 millions. At the international level, there are several general International Conventions and Declarations adopted by the UNO to protect the human rights which are equally applicable to domestic workers equally, but specifically ILO Convention No.189 adopted in 2011 recognizes domestic work, domestic workers, minimum wage, workplace safety conditions and safety protection and declared to celebrate on June 16th of every year as the International domestic workers day.

On the other hand, in India, Constitutional fundamental rights are equally applicable to them, but no separate legislation is enacted to regulate and control domestic work. Indeed, there are several labour legislations address the workers issues among them the Unorganized Social Security Act, 2008 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, are applicable to the domestic workers. So that, still today domestic work is not recognized as a work and Domestic workers continue to struggle for visibility and recognition. Domestic workers perform a variety of household services for an individual or a family. Generally Children, unmarried women, married women, widows and men are also working as domestic workers with different kind of domestic work, majority of whom from uneducated, poorly educated and members of disadvantaged communities and they are facing discrimination based on gender, caste, class and religion. Many factors contributed women to enter into domestic work such as women from poor households, unemployment, low levels of education, lack of skill in employment, decline in public provision of care services and lack of family support, and rural poverty has increased young women to move urban areas in search of employment. Domestic workers are employed in private homes, which lead to make them invisible and isolated from other sectors and domestic work is depending upon the wish and will of employers.

Key words: Domestic Work, Domestic Workers, ILO, India, Rights and Protection

I. INTRODUCTION:

With the impact of industrialization, urbanization, modernization, globalization, modern education and new type of employment opportunities etc.. joint families have been disintegrated day by day and in that place nuclear and neo-local families have been increased tremendously. Due to the above factors the size of family is being decreased day by day in a family and started to depend upon others for their domestic and house hold activities. Now, it is common and fashion in urban areas having domestic workers in every family for their house hold activities and even more demand for domestic workers also.

Generally, domestic work prevails everywhere across the globe and including India also. As it is stated earlier also there is no exact number of figures and no exact data about domestic workers either at the International and National level. However, women workforce dominates the men in domestic work. In India still today there is no specific legislation to regulate and control domestic work. Due to this, domestic workers are marginalized and vulnerable people and they are poor, illiterate and no special skill work among them to do any other work. Due to unorganized sector of domestic work, domestic workers are scattered at different urban areas and they have no organization and union of their own to protect their rights. Their work is undervalued, wages are underpaid, poorly regulated by laws, lack of decent wages, decent work conditions, no specified work time, violence, abuse, sexual harassment at workplace, forced migration, lack of welfare measures, ill treatment and lack of skill development etc.. are major issues faced by them.

II. OBJECTIVES OF THE RESEARCH PAPER:

The research paper covers on the protection of rights of domestic workers in India and the objectives of this paper are as follows;

- 1) To examine the International Laws to protect the rights of domestic workers.
- 2) To know the Constitutional and Legislative provisions to regulate the rights of domestic workers in India.
- 3) To determine the factors for domestic work.
- 4) To trace out the issues of domestic workers.
- 5) To find out the role of judiciary to protect the rights of domestic workers.
- 6) To trace out solutions for problems of domestic workers.

III. THE METHODOLOGY ADOPTED IN THE RESEARCH PAPER:

The methodology adopted by the researcher in the present research paper is a doctrinal method of research and the topic is related “A Critical Analysis on the Protection of Rights of Domestic Workers: A Study with reference to India”. In this doctrinal research, the researcher has confined to study the legal support and to find out solutions in the direction to protect the rights of domestic workers. Indeed, the researcher has followed the Analytical method of research in this research paper.

IV. HYPOTHESIS OF THE RESEARCH PAPER:

The researcher has undertaken the present study in order to find out the legal framework and judicial opinion to protect the rights of domestic workers. Therefore, the researcher has framed the following hypothesis;

- 1) The existing international legal framework relating to protect the rights of domestic workers is adequate.
- 2) The legal framework to protect the rights of domestic workers is inadequate in India.
- 3) A separate legislation to regulate and control domestic work is appropriate to safeguard the rights of domestic workers in India.
- 4) The role of judiciary is adequate to protect the rights of domestic workers in India.

V. REVIEW OF THE LITERATURE:

The review of literature provides an excellent beginning point to the research paper and the area of research is focusing on “A Critical Analysis on the Protection of Rights of Domestic Workers: A Study with

reference to India”. To carry out this research work, the researcher has referred several relevant literatures such as Books, International Conventions, ILO provisions, Constitutional provisions; Enactments, Precedents and journals relied upon the materials relating to this area.

VI. MEANING OF DOMESTIC WORK AND DOMESTIC WORKER:

Domestic work is unorganized and informal work which is related to house hold activities. This work is not recognized specifically at international level upto 2011, but at very first, domestic work and domestic workers have been internationally recognized by the International Labour Organization Convention No. 189. This Convention was adopted on 16th February, 2011 by ILO, which defines domestic work means “as work performed in or for a house hold or households” and a domestic worker means “any person engaged in domestic work within an employment relationship known as domestic worker. So that, either women or men who are working in domestic work are called as domestic workers.

VII. NATURE OF DOMESTIC WORK:

Generally, domestic workers perform a variety of different house hold services for an individual or a family and they are as follows;

- Cleaning house, Cleaning vessels, Floor washing, Washing clothes, Cooking, Care for the children, Look after elderly or Sick family members, Laundry and ironing, Shopping for food articles, Gardening and Guarding the house, Driving for the family members and House hold maintenance etc.. works done by the domestic workers in the employers’ households.

VIII. TYPES OF DOMESTIC WORKERS:

There is strict form of domestic nature of work, but it may be based on temporary or permanent, continuity or discontinuity without security of term of employment. There are different kinds of domestic workers based on the hours of work and nature of employment relationship and they are as follows;

- **PART-TIME DOMESTIC WORKER:** Worker who works for one or more employer’s households for a specified number of hours per day, or perform specific tasks for each of the multiple employers every day is called as part-time domestic worker and after the completion of work worker returns to his home.
- **FULL-TIME DOMESTIC WORK:** Worker who works for a single employer every day for a specified number of hours, normally full day work is known as full-time domestic worker and after work worker returns to home.
- **LIVE-IN WORKER:** Worker who works full time for a single employer and also stays on the premises of the employer or in a dwelling provided by the employer, is called as Live-in worker and worker does not return to home every day after work.

Based on the above discussion, it is stated that there are different types of domestic workers in different employer’s house holds.

IX. FACTORS FOR DOMESTIC WORK:

There are many factors have been contributed to enter into domestic by men and women and they are as follows;

- **Economic factor:** Poverty and unskilled labour are behind the major factors for domestic work
- **Social factor:** Low level of education / Lack of suitable education, Unemployment and lack of family support are the dominant factor for it.
- **Industrialization, Urbanization and Migration:** these have been attracted and drawing attention unskilled labour force to enter into this work.

X. CHALLENGES BEFORE DOMESTIC WORKERS:

Due to unorganized and informal sector of work, domestic workers are facing many challenges and they are as follows;

- In India domestic work is not recognized as a work and domestic worker are not as workers.
- Domestic workers are almost all excluded from majority labour laws which are applicable to industrial and organized sectors.
- Interstate migrant workers condition further worsens the issues as migrants face language barriers, isolation and lack of access to grievance redressal.
- Difficulty to organize and unite domestic workers who are under the control of different employer's households.
- Lack of Trade Unions of domestic workers.
- Lack of formal written contracts which leads to hinders wage negotiation, job security and legal action.
- Lack of effective enforcement of the present Unorganized Workers Social Security Act, 2008.
- Barriers on the application of Minimum Wages Act, 1948 to implement minimum wages.
- Due to poverty and illiteracy, they have fear of filing cases against mighty employers in case of violence, sexual harassments and exploitation.
- Loopholes in Child Labour (Prohibition and Regulation) Act 1986, etc.. are some present challenges before the domestic workers to enjoy equal rights and opportunities as compare to other workers in India.

**X I. RECOGNITION AND PROTECTION OF RIGHTS OF DOMESTIC WORKERS
BY INTERNATIONAL LAW:**

After the establishment of UNO, many Human Rights Conventions and Declarations have been adopted, but particularly United Nations Declaration on Human Rights, 1948 (UDHR), and International Covenant on Civil and Political Rights, (ICCPR), 1976, International Covenant on Economic, Social and Cultural Rights, (ICESCR) 1976, were provided several provisions to enjoy equal human rights by all including domestic workers and it is the obligation of the state parties also to implement all the provisions at their national level. Apart from these Conventions, International Labour Organization plays a crucial role to adopt several conventions and particularly ILO Convention No. 189 adopted in 2011 emphasized to recognize and protect the rights of domestic workers and the important provisions of this convention are as follows;

- Domestic work means work performed in or for a household or households and the term domestic worker means any person engaged in domestic within an employment relationship and a person who performs domestic work only occasionally or sporadically.
- The Convention applies to all domestic workers across the globe and a member country ratifies this Convention after consulting with the most representative organizations of employers and workers may exclude wholly or partly from its scope.
- Each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers as set out in this Convention.
- Each member shall set a minimum age for domestic worker consistent with the provisions of the Minimum Age Convention, 1973 and the worst forms of Child Labour Convention, 1999 as per the national laws and regulations for workers.
- Each member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.
- Each member shall take measures to ensure that domestic workers like workers generally to enjoy fair terms of employment, decent working conditions and decent living conditions.
- Every domestic worker has the right to safe and healthy environment to ensure the occupational safety and health. Each member shall establish effective and accessible complaint mechanism and means of ensuring compliance with national laws and regulations for the protection of domestic workers.
- Each member shall take measures to ensure that domestic workers enjoy minimum wages without discrimination based on sex and ensure weekly rest shall be at least 24 consecutive hours.
- Each member shall establish effective and accessible complaint mechanism and means of ensuring compliance with the national laws and regulations for the protection of domestic workers.

Based on the above, it is stated that every member and ratified country to implement the provisions provided in this convention, but the Government of India is a member country in this Convention but still not ratified due to difficulty of unorganized sector for its enforcement in India.

XII. RECOGNITION AND PROTECTION OF RIGHTS OF DOMESTIC WORKERS IN INDIA:

After the promulgation of Constitution, the Indian Constitution guarantees equal fundamental rights, freedoms and opportunities to all citizens and including domestic workers also. The fundamental rights provided in Part-III ensure to protect and access fundamental rights of workers also. The Directive Principles of State policy provided in the Part-IV empowers states to make special provisions to protect the rights of vulnerable and marginalized sections of society. In this direction the Constitutional, Legislative and Governmental actions in India as follow;

- 1. CONSTITUTIONAL PROVISIONS:** The Constitution of India guarantees certain fundamental rights to all citizens including domestic workers. Indeed, some specific fundamental rights and directive principles of state policy applicable to workers and they are as follows;
 - ❖ Article 14 provides equality before the law and equal pay for equal work.
 - ❖ Article 15 prohibits discrimination based on sex by state .
 - ❖ Article 19 (1) © Freedom to form Associations or Unions.
 - ❖ Article 21 guarantees protection of life and personal liberty.
 - ❖ Article 23 prohibits human trafficking and forced labour.
 - ❖ Article 24 prohibits employment of Children under fourteen years of age in hazardous employment.
 - ❖ Article 39 (e) encourages the state to prevent abuse of individuals' health and strength of workers without any age and gender.
 - ❖ Article 41 provides right to work, education and public assistance in case of unemployment, old age and sickness.
 - ❖ Article 42 securing just and humane conditions of work and maternity relief.
 - ❖ Article 43 right to living wage and decent conditions

Based on the above discussion, it is stated that there are several constitutional provisions to protect the rights of domestic workers equally in India.

- 2. LEGISLATIVE ACTIONS:** In India, before and after the independence, several labour legislations were enacted to protect the rights of workers in general such as the Workmen Compensation Act, 1923, the Trade Unions Act, 1926, the Payment of Wages Act, 1936, the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Factories Act, 1948, the Employees' State Insurance Act, 1948, the Employees Provident Fund Act, 1952, the Mines Act, 1952, the Maternity benefits Act, 1961, the Payment of Bonus Act, 1965, the Contract Labour (Regulation and Abolition) Act, 1970, the Payment of Gratuity Act, 1972, the Bonded Labour (Abolition) Act, 1976 etc.. However, no specific law to regulate and control domestic work and to protect the rights of domestic workers. The Government of India was prepared the Central domestic workers draft bill but it was not enacted till today. However, certain general labour laws are applicable to them and they are as follows;
 - **The Unorganized Social Security Act, 2008:** Under this Act, all unorganized workers including domestic workers are entitled to get certain welfare measures such as health insurance and pension schemes initiated by the Central and State Governments.
 - **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:** It prevents sexual harassment of women at dwelling place and dwelling place is also recognized as a workplace and all women including domestic workers irrespective of age are being protected from sexual harassment at their workplace. If any complaints local Committee at district level empowered to receive complaints and conduct inquiries and ensures to resolves issues, but local committees are not so effective. Every offence under this Act shall be non-cognizable and Judicial Magistrate of the first class shall try any offence punishable under this Act to impose fines and punishments as per the existing laws.

- **The New Code on Social Security, 2020:** This new Code unifies labour laws by bringing all kinds of unorganized workers including domestic workers and gig/ platform workers under the social security schemes. It enables the Central and state Governments to provide various schemes such as health, maternity benefits, old age security pension, disability coverage, skill upgradation, housing, employment injury benefits and provident fund benefits etc.. but yet this code is not implemented in India.

3. GOVERNMENTAL ACTIONS: India is a federal form of administration of governments and having both the Central and State Governments. The Government of India through the Ministry of Labour and Employment has made a Draft National Policy for unorganized Domestic workers and updated in 2017/2019/2021 and initiatives have been taken place to create e-Shram Portal to identify and provide some social security measures with the aim of protection of unorganized workers and workers towards better regulation with advisories to states to curb exploitation by placement agencies. Apart from these, several State Governments also established domestic welfare boards including Tamil Nadu, Delhi and Maharashtra which provide health, insurance, pension schemes, education aid for children and grievances redressal mechanism.

XIII. THE ROLE JUDICIARY TO PROTECT THE RIGHTS OF WORKERS:

The Constitution of India has recognized Indian judiciary is an independent judiciary and empowered to exercise judicial review power over the legislative and executive functions in case of maladministration and inactions in public service. The constitutional courts like Supreme Court at the union level and High Courts at state level have empowered to protect the fundamental rights of citizens guaranteed in part-III of the Constitution. Even in the absence of any law, the Supreme Court is empowered to protect the rights of citizens and provide justice to the aggrieved persons by framing special rules and giving directions to Governments to frame laws. In this direction, some important judicial decisions as follows;

- In **People's Union for Democratic Rights v. Union of India & others**, the Hon'ble Supreme Court in a land mark judgment in Delhi's Asian Games Construction case filed by PUDR in the Public Interest Litigation stated that nonpayment of minimum wages, hazardous work for children, gender pay gaps, poor working conditions etc... alleged violations of right to life guaranteed under Article 21 and prohibition of forced labour under Article 23 emphasized the state's duty to enforce labour laws and ensure social justice. Finally the Apex Court was appointed ombudsmen to monitor conditions and mandated compliance of labour laws.
- In **Sanjit Roy v. State of Rajasthan**, the case involved workers in Rajasthan famine relief projects and the Supreme Court stated that paying less than minimum wage violates female workers in their right to equality under Article 14 and violating Article 23 prohibition of forced labour and the Rajasthan Famine Relief Works Employees Act, 1964 was deemed unconstitutional.

Therefore, Indian judiciary is more active and empowered to protect the rights of workers within the constitutional and legislative framework, but no legislative framework in domestic work. In a democratic and parliamentary system of government, it is the duty of legislature to frame suitable legislation to address the issues any field and in the absence of any law judiciary can give directions to government to frame law.

XIV. CRITICISM:

The unorganized and informal sector groups, marginalized and vulnerable groups of domestic workers are being exploited by the mighty employers whenever their work is within the household activities. Due to poverty, illiteracy low education and unskilled domestic workers are physically and mentally abused and misused by employers. Violence and sexual abuse, Child labour and exploitation of children and low wages are common customary practices in domestic work. Even the employment of domestic worker based on the will of employer and no security to the term of employment and no annual and causal leave facilities. No health, welfare and security benefits compare other industrial and factory workers. In addition to the above, Gender and Caste discrimination is also common in domestic work. Due to lack of any wage policy, low wages and under wages and poor working conditions prevailed everywhere in domestic work. Even though after several decades of independence to India, domestic work is not

regulated and controlled by Governments. No specific legislation to protect the rights of domestic workers as compare to other workers and both the Central as well as state Governments have failed to enact separate legislations to regulate and control domestic work. So that, it is urgently required to frame a separate legislation to recognize, regulate, protect and control domestic work and to protect the rights of millions of domestic workers in India.

XV. FINDINGS:

As per the hypothesis formulated by the researcher earlier, the researcher has determined the following findings and they are as follows;

1. The existing international legal framework relating to protect the rights of domestic workers is adequate and sufficient.
2. The legal framework to protect the rights of domestic workers in India is inadequate and insufficient.
3. A separate legislation to regulate and control domestic work is appropriate and requires safeguarding the rights of domestic workers in India.
4. The role of judiciary is adequate and effective to protect the rights of domestic workers in India.

XVI. SUGGESTIONS:

Based on the above observations, the researcher has made several suggestions and they are as follows;

1. Immediate steps to be taken by the Government of India to ratify the ILO Convention No. 189.
2. It is urgently requires to frame a separate Central Legislation in the name of Domestic Workers Rights (Regulation, Protection and Welfare) Act to formally recognize domestic work as employment.
3. Domestic workers laws should be as per the provisions of ILO Convention No. 189 of 2011.
4. Provisions to be provided to register domestic workers mandatorily.
5. There must be a provision for written contracts between worker and employer /organization.
6. Wage policy to be framed and wages should be fixed and revised based on hour/ time/piece rate of wages.
7. An active redressal mechanism to be established to address the issues of domestic workers at Taluk/ District level.
8. Weekly Leave, Annual Leaves and Sickness leaves with wages should be provided to workers.
9. Social Security measures such as Provident Fund, Health Insurance and Gratuity facilities should be provided based on tripartite contribution of employer, employee and government.
10. It is required to establish domestic welfare boards for monitoring welfare measures at local levels based on tripartite participation of employer, employee and government representatives.

XVII. CONCLUSION:

Based on the above discussion, it is stated that at the international level ILO Convention No.189 adopted in 2011 which provides various provisions to regulate domestic work and control exploitation, physical and verbal abuse and sexual violence against domestic workers. The Convention recognized domestic work, registration of domestic worker, decent work, to enter in to contract, payment of minimum wages in cash and within the time limit, recognition for any organization to handle domestic workers, leave with wages like weekly leave, annual leave, sickness leave, health measures, security measure, redressal mechanism for grievances and access to settle disputes through tribunals and courts. On the other hand, in India, till today the Government of India is not ratified the convention and still no separate laws are enacted. Perhaps the other labour laws also not covered the domestic workers, but only a few states were established separate boards for the welfare of domestic workers. Only a few private organizations like Self Employed Women's Association (SEWA) and National Domestic Workers' Movement (NDWM) are fighting for protection of rights of domestic workers. So that, it is urgently requires to enact a separate legislation to regulate and control domestic work and for access to welfare of the domestic workers in India. As per the observation, no effective trade union for domestic workers also to protect their rights. Therefore, domestic workers are being continuously exploited by mighty household employers.

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