



# DOMESTIC WORKERS AND MIGRANT WORKERS- RIGHTS FOR PROTECTION AND RECOGNITION OF THEIR SERVICES- A STUDY

Dr. Dhanalakshmi C.V

## Abstract-

The burden of poverty is borne by the women folk from every corner of the country largely due to lack of natural, social and financial assets. Poverty a great menace in society, that generally drives the women folk, to secure and gain employment in the unsecured informal sector economy, where they are beyond the reach of any form of formal or legal regulations. They choose employment in all the categories of employment which requires skilled, unskilled, trained and untrained workers equipped with less qualification or no qualification and with absence of any forms of social security benefits and protection. In India the labour force is blended with both internal and migrant workers. Among the workforce population we find more concentration of migrant workers, especially women workers who are migrating from rural to urban cities or crossing countries in search of employments in the garment industry, construction, domestic work sector, street vegetable vendors and such other incidental employment. These women workers adapt to seek employment in any of the above sectors only for securing financial independence and security to their family. Despite the increase in employment of women workers in the unorganized sector, the social security and social protection to secure them a dignified living as a labour and not a commodity is minimal. This paper focuses on the migrant women workers, constitutional protection and the legal protection of these workers for protecting their rights.

## Introduction

The Indian economy is mainly scattered among both the organised and unorganised workforce<sup>1</sup>. The Informal sector employment is the major backbone of the Indian economy, which is under looked by most of us. Among the informal Sector labour force, employment in the domestic work sector occupies a dominant position. The informal sector employment is the emerging field for the labour force participation in both developed and

• Assistant Professor of Law, Government Law College, Ramanagara.

<sup>1</sup>. Henceforth referred to as 'Formal' and 'Informal' Sectors respectively.

developing countries like India.<sup>2</sup> Domestic workers and domestic work sector are an inevitable part of the society, without whom no women members of the household can lead a comfortable life. Today it is an accepted norm of every household to hire a domestic worker or servant. The financial independence is very imperative for attainment of human dignity and self-esteem, and employment is one of the essential mechanisms for an individual to secure economic empowerment. With the growing explosion of the labour force in India, employment without security has become the rule of the day.<sup>3</sup> In-formalization is the crucial determining factor to this domestic work sector in terms of tasks, nature of work, employment relations, the multiplicity of employers and so on.

Today women as a labour force actively participate both in formal and informal sectors of employment. More than 90% of women are concentrated in the informal sector.<sup>4</sup> Among all the categories of informal sector employment, domestic work sector comprise of a significant part of global workforces and the workers belong to the most vulnerable group; their work is undervalued because the said employment is unprotected and unregulated. The origin of occupation of domestic work and hiring of domestic workers by an elite group of employers is not a novelty; it was in existence even during ancient times and was practised in the form of slavery. The system of *dasi* (performing the task at the house of the landlord with or without the payment or as a substitute for the debt taken by the family members) was prevailing during olden days.

In India, over the last few decades, the index of women in the category of ‘domestic workers’ has not dropped below 99 per cent.<sup>5</sup> Domestic workers are omnipresent and scattered throughout India. The rural women folk are largely occupying their spaces in the domestic work sector as a last opted option because of possessing low skill, illiteracy, poverty, seasonal employment and want of income for the sustenance of their family and for their livelihood. Domestic workforce that is largely encompassed with millions of women and children remain unseen, undervalued and often deprived of their essential worker's rights that are required for upholding their dignity of life as a worker. Currently, there has been tremendous growth in the demand and supply of domestic workers especially for women and girl children in India. The placement agencies have grown up like mushrooms in the metropolitan cities for recruiting the domestic workers in the domestic work industry as they are in high demand but these agencies are not under the control of any regulatory mechanism. The migrated female populations find the premise in the domestic work employment with no social security arrangements and legal protection.

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<sup>2</sup>. Prof. Uma Joshi & Ms Neena Thakar, Domestic Workers in India: The Major force of Unorganised Sectors, Indian Journal of Research, Vol 2; issue 3/ Mar 2013, Paripex, Pg 179-181.

<sup>3</sup>. [www.ilo.org/html](http://www.ilo.org/html)

<sup>4</sup>. Dr L. Mishra, Unorganised Labour; Some Major Policy Issues, social action, 47, 1997 (Apr-June), Pg 155.

<sup>5</sup>. National Sample Survey Organisation statistics, (68<sup>th</sup> round), Government of India, 2011-2012.

### Data of Domestic Workers:

According to the updated National survey conducted by the School of Social work,<sup>6</sup> women constituted 87.09 percentages of domestic workers in Karnataka, 82.38 in Ranchi, 75 per cent in Kerala and 90.78 per cent in Andhra Pradesh. Another critical aspect of the domestic workforce is child labour practice in domestic labour that is much accepted and widely prevalent in India. Even for children who are young and submissive, there is a growing demand or preference to employ them as child domestic workers (Live-in domestic workers), as they are more preferred by most of the employers. From various studies,<sup>7</sup> it has been observed that due to prosperity, development and urbanisation the demand among people for domestic help has steeply increased since 1999-2000. The recent International Labour Organization (ILO) estimate based on National survey and census of about 117 countries, place the number of domestic workers at around **53 million**<sup>8</sup> and the recent estimate of domestic workers by ILO 2016 was around 61 million. As per the Employment-unemployment Survey of National Sample Survey Organization (NSSO)<sup>9</sup> the estimated number of domestic workers in the country was 41.3 lakhs during 2011-12 of which majority 27.9 lakhs were women.<sup>10</sup> Globally,<sup>11</sup> it has been estimated that at least 10 million children work as domestic workers.<sup>12</sup> India has also witnessed a 75% increase in women's domestic workforce, accompanied by a significant increase in migrant domestic workers<sup>13</sup> who are particularly vulnerable<sup>14</sup> to abuses and human rights violations. According to Tripti Lahari,<sup>15</sup> the data of domestic workers in India has increased by 120 per cent between 1999 and 2001. Though female labour participation is shrinking in the labour market, the absolute number of women workers in the domestic work sector has increased.<sup>16</sup> Between 2001 and 2011, the number of female labour participation in the age group has increased by 17 per cent and in cities from 14.7 million to 25 million in 2011.<sup>17</sup> According to the data provided by the Delhi Labour Organisation,<sup>18</sup> there are about five (5) crore domestic workers in India and most of them are women. According to the KPMG report

<sup>6</sup>. Roshni Nilaya, A National Socio-Economic Survey on Domestic Workers; School of Social work, Research Department, Mangalore. (undated).

<sup>7</sup>. Report of the Task Force on Domestic Workforce of 2011. The figure had gradually increased from 7,40,000 in 1991 to 16.6 lakhs in 2001.

<sup>8</sup>. Report of ILO- 'Domestic Workers across the World –Global and Regional Statistics and the extent of Legal Protection/ILO-Geneva-2013.

<sup>9</sup>. As per the Report of the National Statistical Survey Organisation (NSSO)- Employment and Un-Employment Survey, Government of India, 2011-12.

<sup>10</sup>. 'Law to regulate working condition of Domestic Workers Demanded, The Indian Express, PTI, New Delhi, Dec 1, 2016.

<sup>11</sup>. Report of the Task Force on Domestic Workforce of 2011. The figure had gradually increased from 7,40,000 in 1991 to 16.6 lakhs in 2001.

<sup>12</sup>. Ibid.

<sup>13</sup>. Helma Lutz's report on 'Migration and Domestic work, [http://en.wikipedia.org/wiki/domestic\\_work](http://en.wikipedia.org/wiki/domestic_work). [www.etitshwanelo.org/bw/domestic.html](http://www.etitshwanelo.org/bw/domestic.html)

<sup>14</sup>. [www.ilo.org/ipec/areas/child](http://www.ilo.org/ipec/areas/child) domestics labour/lang-en/index-htm-ILO on domestic labour, global facts and figures, retrieved on 12 Jan 2017 @ 9.30 pm.

<sup>15</sup>. Tripti Lahari, "Maid in India: Stories of Opportunity and Inequality in our homes, Aleph book Co, 2017, Pg 44.

<sup>16</sup>. Ibid.

<sup>17</sup>. The said Bill still pending in the Parliament. The bill mainly speaks for the protection of domestic workers still pending. Government of India, Ministry of Labour and Employment, Final Report of the Task Force on Domestic Workers, 2011, pg 43.

<sup>18</sup>. Meenakshi Tewari, 'Why is the Condition of domestic work seldom discussed in India? The Wire, June 8<sup>th</sup>, 2018.

around 90 per cent of the total domestic workforce in India, are women. The size of the domestic workers is expected to grow from 6 million in 2013 to 7.79 million in 2017, and further to 10.88 million in 2022.<sup>19</sup>

In India, domestic workers are included under the category of 'Personal Social and Community Services' (Category 9) under the National Industrial Classification (NIC) followed as per the National data collection agencies.<sup>20</sup> Domestic workers are the most ignored class of informal employment workers because they are even not considered as 'workers' in the real sense, and the question of enforcing their labour rights' as '*domestic workers*' rights are often overlooked without recognition of them as a '*worker*'.

### **Migrant Domestic Workers and their Issues.**

India a democratic country is a country of origin, transit and destination for the domestic workers. India receives domestic workers from across the neighbouring countries from Nepal, Bangladesh and Sri Lanka, and currently, it is being estimated that there are around 90 million of local and migrant domestic workers in the country.<sup>21</sup> Many domestic workers are migrants from poorer states and are among the marginalised and socially discriminated populations in India. Most of them belong to the lower and disadvantaged caste, being illiterate they are prone to vulnerabilities and disempowerment<sup>22</sup> Within the country, underage domestic workers are increasing, there are an estimated 12.6 million underage domestic workers, 86 per cent of them are girls, and 25 per cent of them are below 14 years of age.<sup>23</sup> The domestic work sector is an industry that is also a major receiver of the migrated population as domestic workers both within and outside the nation as the demand for them is on the rise. The various studies on domestic work in India have noted that women from marginalised castes migrated from rural areas only in search of jobs to earn money, form a substantive group of domestic workers.<sup>24</sup>

According to the study conducted by Vigyan foundation on Social Security,<sup>25</sup> it is found that due to fall in the agricultural activity, a sizeable percentage of women workers are migrating to urban and semi-urban areas in search of jobs every year. This issue is universally true among all the states in the Indian economy. The internal migrants flow from the more impoverished region of the state. Migrant domestic workers suffer a lot at the hands of the employers (within and outside the country) because they are windswept to harsh realities such as seizing of Passport, and ill-treatment at the workplace.

<sup>19</sup> . Report prepared by KPMG- Human Resources and Skill Requirements in the Domestic Help Sector, (2013-17, 2017-22), prepared by KPMG for the National Skill Development Corporation (NSDC), Volume 7, [http://www.nsdciindia.org/sites/default/files/files/Domestic\\_Help.pdf](http://www.nsdciindia.org/sites/default/files/files/Domestic_Help.pdf). retrieved on 16th April 2019 at 8.a.m.

<sup>20</sup>. Ibid. @ pg 85.

<sup>21</sup>. Dr Anitha Taneja, Human Rights of Working Women Under Various Legislations, Indian Bar Review, Vol XXX (4) 2003, Pg 10.

<sup>22</sup>. India: Domestic Workers, <https://www.antislavery.org/what-we-do/past-projects/india-domestic> retrieved on 16th April 2019 at 7.30 a.m.

<sup>23</sup> The Right to Unite, The Handbook on Domestic Workers Rights Across Asia, 2010, Asia Pacific Forum on Women, Law and Development.

<sup>24</sup>. Kaur. R, Migrating for Work: Rewriting Gender Relation in Sadhana Arya and Anupama Roy (ed), Poverty, Gender and Migration: Women Migration in Asia, Sage Publication, New Delhi, 2006

<sup>25</sup>. Ms Jyothi Awasthi, Social Security for Unorganised Sector Workers in India- A Glance at Some State Acts, OXFAM, India, VIGYAN Foundation, 2015-16.



These migrated women workers being illiterate and unskilled seek entry and find survival in the domestic work industry, which does not require any qualification, training and formal experience. The women workers in such employment are intertwined with least protection and deprived of their fundamental labour rights, and are exposed to large-scale violations of workers' rights. Those women folk who migrate from the rural areas find their premise of job within and outside of our country. Within the nation, internal migrants who flew from the least developed states like Jharkhand, Bihar, West Bengal, Assam and other states find employment in metropolitan cities like Delhi, Bangalore, Chennai and other convenient places where they are on demand; and crossing the borders of the country, they migrate to countries like Gulf, U.K, Singapore and so on. The migrated population of domestic women workers who have been engaged in domestic work; within and outside the nation are entirely ignored and thus deprived of any social security arrangements and legal protection.<sup>26</sup>

The major influx of migrants is linked to factors such as agrarian distress, seasonal employment opportunities, large construction projects such as Bangalore metro and displacement due to natural disasters (Tsunami) and mainly economic or financial necessity.<sup>27</sup> Once the migrated population enters the urban areas; never intends to get back to their villages or home towns after the completion of the project or work assigned to them and therefore they try to look for employment at the same place, but in different jobs by moving to another place such as construction sites or other projects, and ultimately the women from those families customarily choose domestic work at the nearby places and get accustomed to the same.

#### **Pattern of Abuses: -**

Sex-based discrimination against women workers in the informal sector employment at workplaces by the State agencies, employers, and placement agencies have led large-scale violations of human rights and domestic law guarantying freedom from discrimination.<sup>28</sup> By various studies,<sup>29</sup> conducted it has been observed that domestic women workers are subjected to pervasive and continuous forms of abuses such as beating, scolding, verbal accusation, assault, physical<sup>30</sup> and mental torture, maltreatment, criminalization of the offences and other form of abuses that are carried out by the employers who act with no mercy on the workers who carry out their basic right at home itself. The migrant domestic women workers even face abuses with regard to not getting the

<sup>26</sup>. In case of absence of any Social security arrangement between the countries, it is difficult to provide legal protection. Conflict of domestic laws between the two countries come in the way of providing protection.

<sup>27</sup>. Dr L. Mishra, Unorganised Labour; Some Major Policy Issues, social action, 47, 1997 (Apr-June), pg. 166.

<sup>28</sup>. Discrimination based on Sex is prohibited by UDHR, under Article 2 and 7; International Covenant on Civil and Political Rights, Under Article 2; and International covenant from Economic, Social and cultural rights. And Convention on the Elimination of all forms of discrimination against women, Article 2. Indian State is a party to both CEDAW and Civil covenant and also she has prohibited the sexual harassment by enacting a domestic law called Protection against Sexual Harassment in the year 2013. This act includes domestic workers too.

<sup>29</sup>. Hamid A, Domestic Workers: Harsh Everyday Realities, Economic and Political Weekly, Vol 61, No 13, Pg 1235-1235 and Dr Rekha Roy, Women's Rights in India-A Feminist Perspective, Akansha Publishing House, New Delhi, 2006.

<sup>30</sup>. The case of Laxmi working for a family at Sheshadhripuram, from Bangalore reported in the Paper that how she was beaten up by the employer without any kind of courtesy; the servant of a reputed MLA, who did take the shelter under the influence of police and escaped from prosecution for being guilty.

wages promised,<sup>31</sup> subject to long working hours, ill-treatment at the workplace, harassment and so on. Most of the harassed domestic workers are live-in migrant domestic workers, who are round the clock working without rest.

### **Labour laws and Migrant domestic workers-**

Even though domestic women workers are articulated as the essential source for the survival of the elite class, but still they are neglected lot by most of us because they are often paralysed with stigmatized social and economic factors that are toppled up in the society. The domestic women workers have been explicitly excluded from the protection of countries labour law protection.

The lives of millions of domestic workers, most of them women and girl children who run the engine of urban homes are denied of their labour rights and not even recognized as a 'worker' in real sense of labour jurisprudence. The fundamental issues such as issues relating to governing minimum wages, payment of wages, addressing complaint from employers and domestic workers, regulating working and living conditions, regarding maternity benefits etc are yet to be resolved for them. Despite of their significant role in the contemporary world and the functioning of every household, they remain one of the neglected and least protected groups of informal sector workers under the existing labour legislation. The only enactment that protects the migrant domestic workers is the Inter-State Migrant Workmen's (Regulation of Employment and Conditions of Services) Act, 1978.<sup>32</sup>

Domestic women workers remain voiceless, as they are 'illiterate' or unaware of their rights' or 'ignorant' about the rights available for them. Some of the organisation working towards the women workers in general and domestic women workers in particular for protecting their rights since the 1980s,<sup>33</sup> are SEWA, NDWN and so on. If united, the strength of the workers is more than being single. The lethargic attitude and lack of commitment from the labour ministry for the protection of the domestic women workers is one prominent reason for they being often neglected. Due to the inbuilt constraints in the existing labour laws, the recognition and protection of the rights of the domestic women workers is a nightmare.

### **Conclusion and suggestions**

Labour is an abundant factor in the Indian economy that has occupied its space more in the informal sector. Due to class transformation and restructuring of family, paid domestic work is the necessity of the day. Currently, domestic women workers are the need of the urban society and are employed in the private household of the employer that is unsecured with absence of employment benefits and guarantees. convenient for them to get back to home before their children get back from school.

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<sup>31</sup>. The issue relating to Devyani Gorpade case, due to the absence of applicability of minimum wage laws of US government to the domestic worker of Indian origin hired by an Ambassador of Indian State, the issue crippled up.

<sup>32</sup>. The Act was amended in 2011 to become the inter-state Migrant Workers (Regulation of Employment and Conditions of Services) Act 1978 in order to make it gender neutral.

<sup>33</sup>. Organisations like SEWA and Working Women Forum (WWF) and various other forms of NGO's and other form of associations.

Women domestic workers work in an unregulated environment that is the domain of a private home or household of the employer. The decent work environment as stipulated by the International regime is thus denied to domestic workers and as such, they are not paid well, subject to intolerable abuses, excluded from the purview of labour welfare legislations, suffer mal-treatment at the hands of the employer with impunity. The existing labour laws in India envisage that the legal protection with respect to important employment issues such as wages, conditions of employment, safety at work and workplaces, social security, old-age pensions, health issues, maternity issues and so on: are not applicable to the chunk of women workers in the domestic work sector. Some of the measures to be adopted to ensure decent work environment to these domestic workers are as follows-

- **Recognition of domestic workers and domestic work sector.**
- **Mandate compulsory registration of these workers.**
- **Understanding the situation of domestic workers through Research.**
- **Through proposing amendments to the existing labour laws, the inclusion of domestic workers is permissible.**
- **Ratification of the Domestic Workers Convention No 189.**
  - **Role of Judiciary has to be strengthened-**
  - **Skill training for domestic workers**

