

RIGHTS OF DOMESTIC WORKERS IN INDIA: A LEGAL OVERVIEW

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ABSTRACT:

This paper provides a legal overview of the rights of and issues concerning domestic workers in India. It probes into the conventions of the International Labour Organisation viz., the Domestic Workers Convention, 2011 (Convention No. 189), and R201 - Workers Recommendation, 2011, and the Indian laws viz., the erstwhile, Unorganised Workers' Social Security Act, 2008, and the prevailing, Code on Social Security, 2020, that are concerned with such work. The paper examines the contract between an employer and the domestic worker. With forethought it wraps up by alerting the legislative and legal community to exercise caution that laws and regulations do not become a blight for domestic workers.

Keywords - Contract, Domestic worker, Human dignity, Labour, Livelihood, Social Justice, Social Security, Unorganised Sector

INTRODUCTION:

Domestic workers, have been an integral part of the history of work especially in the Indian society, ever since the feudal system.² They have been engaged by individual households to provide regular and in some cases constant assistance in carrying out the household chores, looking after the infants and / or children, the geriatric and / or the infirm, and in certain homes, even tending to pet/s.

The structural changes in the Indian economy since the 1990s have led to an increase in income in certain sections of the population thus resulting in the increase of paid domestic work.³

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² Neetha, N. (2021). Misconstrued Notions and Misplaced Interventions: An Assessment of State Policy on Domestic Work in India. *Indian J Labour Econ*, August 9, 64(3): 543–564. [<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8351567/>], Alternate citation: Neetha N. Misconstrued Notions and Misplaced Interventions: An Assessment of State Policy on Domestic Work in India. *Indian J Labour Econ*. 2021;64(3):543-564. doi: 10.1007/s41027-021-00334-w. Epub 2021 Aug 9. PMID: 34393391; PMCID: PMC8351567, last accessed on 06.12.2023.

³ Neetha N. (2023, June 20). India's domestic workers: key issues remain swept aside. The Hindu Centre for Politics and Public Policy, <https://www.thehinducentre.com/publications/issue-brief/indias-domestic-workers->

Moghe (2023) enunciates that, the labour of domestic workers has been devalued and invisibilised for it involves non-profit generating household chores done within the confines of the employer's home.⁴ It can therefore be construed that, efforts of domestic workers have always been taken for granted, often paternalistically appreciated, and constantly remunerated as per the whims and fancies of the employers can be alluded to Karl Marx (1865) assertion that, "...the reward for labour, and quantity of labour, are quite disparate things".⁵

In view of the ongoing LPG⁶ era, Sarangi (2020) holds a divergent view that, liberalisation and economic growth have expanded job prospects for both skilled and unskilled workers, and ergo, in the present scenario, the market for domestic workers is clearly a seller's market, where, the seller of labour or the worker, has more bargaining power than the buyer.⁷

Domestic workers belong to what is termed as the "informal sector"⁸ or "unorganised sector", i.e., the sector comprising of the diverse economic activities, establishments, jobs, and workers that are not regulated or protected by the state.⁹ Dasarathi (2024) explains that, the work carried out by domestic workers is fragmented and dispersed and many times across multiple private homes, unlike conventional formal workspaces.¹⁰ According to Portes (1983), the informal sector is the most deprived sector of the population, as the workers (including those engaged in domestic service) in this sector tend to have low levels of education and come disproportionately from such segments of the population as women, children, and aged, and

[key-issues-remain-swept-aside/article66938078.ece#:~:text=This%20imbalance%20is%20further%20aggravated,unenforceable%20contractual%20obligations%2C%20are%20embedded](#), last accessed on 29.04.2024.

⁴ Moghe, K. (2023, June 16). International Domestic Workers Day: Lookback at Ghastly Working Conditions in India. NewsClick. <https://www.newsclick.in/international-domestic-workers-day-lookback-ghastly-working-conditions-india#:~:text=Miserable%20conditions%20of%20domestic%20workers&text=Several%20studies%20reveal%20that%20domestic,social%20security%20such%20as%20pensions.>, last accessed on 06.12.2023.

⁵ Marx, K. (1865). Value, Price, and Profit. Source: <https://www.marxists.org/archive/marx/works/1865/value-price-profit/ch02.htm#c6>, last accessed on 29.04.2024.

⁶ Liberalization, Privatization and Globalization.

⁷ Sarangi S. (2020). The Economics of Small Things. Penguin Books, Penguin Random House India, Pvt. Ltd., Haryana, p. 73.

⁸ also known as the "informal economy".

⁹ Women in Informal Employment: Globalizing and Organizing (WIEGO). Source: <https://www.wiego.org/informal-economy#:~:text=What%20is%20the%20Informal%20Economy,or%20protected%20by%20the%20state>, last accessed on 29.04.2024.

¹⁰ Dasarathi, A. Invisible labour, visible resistance: Domestic workers fight for rights, May 1, 2024, The Leaflet, Constitution First, <https://theleaflet.in/invisible-labour-visible-resistance-domestic-workers-fight-for-rights/>, last accessed on 28.09.2024.

urban migrants.¹¹ Neetha (2025) corroborates that, low wages, unfair working conditions, the obligations to perform additional tasks, increased workloads without extra compensation, job insecurity and absence of social security are key issues concerning domestic workers.¹²

The Constitution of India guarantees “social justice”,¹³ and entrusts the State with the responsibility to provide for securing just and humane conditions of work and for maternity relief.¹⁴ It casts a responsibility upon the state to secure by apposite legislation, economic organisation or in any other manner, a living wage, and such conditions of work that ensure a decent standard of life for all workers.¹⁵ Article 21¹⁶ guarantees, the right to life with human dignity, including the right to livelihood.¹⁷

According to the National Domestic Workers’ Movement,¹⁸ in India, the number of domestic workers range from official estimates of 4.2 million to unofficial estimates of more than 50 million, significant majority of which comprise of women.¹⁹ As we humans “claim” to have become more civilised and just, it is incumbent upon us take up the cause of these vulnerable workers so that their efforts are transformed from servitude to service by ensuring that they benefit from the Constitutional guarantee of “social justice”.

EXPOUNDING THE TERM ‘DOMESTIC WORKERS’:

Domestic workers are individuals engaged by private households against a remuneration for direct and indirect care services comprising of chores like housework, cooking, washing and / or ironing clothes, washing utensils, looking after the children, the elderly, the sick members and / or pet/s members in the family, gardening, guarding the house, and includes drivers, and vehicle cleaners.

¹¹ Portes, A. (1983). The Informal Sector: Definition, Controversy, and Relation to National Development. *Review (Fernand Braudel Center)*, 7(1), 151–174. <http://www.jstor.org/stable/40240956>, last accessed on 29.04.2024.

¹² Neetha N., My Workplace, Your Home, A separate law for domestic workers could help reduce their vulnerabilities, 03.02.2025, The Indian Express, Mumbai., p. 10.

¹³ The Preamble.

¹⁴ Article 42 (Part IV, Directive Principles of State Policy).

¹⁵ Article 43 (Part IV, Directive Principles of State Policy).

¹⁶ Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to ‘procedure established by law’.

¹⁷ Jain, M. P. (2007), *Indian Constitutional Law, Wadhwa and Company Nagpur, New Delhi.*, pp. 1122 - 1124.

¹⁸ A Public Charitable Trust registered as the ‘National Domestic Workers’ Welfare Trust’ under the Maharashtra Public Trust Act. Source: <https://ndwm.org/national-domestic-workers-movement/>, last accessed on 11.12.2023.

¹⁹ National Domestic Workers’ Movement, <https://ndwm.org/domestic-workers/#:~:text=The%20number%20of%20domestic%20workers,significant%20majority%20of%20domestic%20workers>, last accessed on 11.12.2023.

Under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, a “domestic worker” means *“a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part-time, full-time basis, but, does not include any member of the family of the employer.”*²⁰

The International Labour Organisation (“ILO”) regards a worker to be informal if the social security for such a worker is not paid for by the employer; is not entitled to paid annual leave and / or paid sick leave; or works in a household; or owns and operates an informal enterprise, quintessentially in the form of self-employment (micro-enterprises).²¹ It classifies domestic workers into full-time or part-time basis, where the worker may be employed by a single household or by multiple households; may be residing in the household of the employer (live-in worker) or may be living elsewhere (live-out), and migrant domestic workers, i.e., those who have migrated out of their homeland in search of work.²²

The Domestic Workers Convention, 2011 (Convention No. 189), a rubric that formulates labour standards for protection of domestic workers,²³ envisages specific protection to domestic workers, with the idea to put in place decent work conditions for domestic workers. The Convention defines domestic work as ‘work performed in or for a household or households’, and ‘domestic worker’ as ‘any person engaged in domestic work with an employment relationship.’²⁴ Correspondingly, the R201 - Workers Recommendation, 2011 (No.201)²⁵ is a supplementary Recommendation to Convention No.189 that acts as a tool for Member-countries to incorporate the spirit of the Convention in their national legislations and policies concerning domestic workers.²⁶

²⁰ Section 2 (e).

²¹ Ghosh, J. (2022), The Making of a Catastrophe, The Disastrous Economic Fallout of the Covid-19 Pandemic in India, Aleph Book Company, New Delhi., Pp. 8-9.

²² <https://www.ilo.org/global/topics/domestic-workers/who/lang--en/index.htm>, last accessed on 13.11.2023.

²³ Neetha N. (2023, June 20). India’s domestic workers: key issues remain swept aside., The Hindu Centre for Politics and Public Policy, <https://www.thehinducentre.com/publications/issue-brief/indias-domestic-workers-key-issues-remain-swept-aside/article66938078.ece#:~:text=This%20imbalance%20is%20further%20aggravated,unenforceable%20contractual%20obligations%2C%20are%20embedded>, last accessed on 06.12.2023.

²⁴ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189, last accessed on 13.11.2023.

²⁵ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R201, last accessed on 13.12.2023.

²⁶ Decent Work for Domestic Workers, Convention 189 & Recommendation 201 at a glance, (2011), International Labour Organization, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_170438.pdf, last accessed on 13.11.2023.

According to ILO, Domestic workers are an important segment of the global workforce in informal employment and are among the vulnerable groups of workers. The ILO study estimates that there are 75.6 million domestic workers worldwide, most of who belong to developing countries. It is a highly feminised sector, with 76.2% comprising of women. One in every twenty-five women workers worldwide is a domestic worker.²⁷ According to the Ministry of Labour and Employment, Government of India, the unorganized sector workers (including the home based or domestic workers) constitute approximately 93% of the total work force in the country.²⁸

LEGAL RELATIONSHIP BETWEEN EMPLOYER AND THE DOMESTIC WORKERS:

Armacost (1994) is of the view that amid the various groups of workers, domestics are the ones who are most exploited by their employers and the least protected by the law.²⁹ Bhoi (2015) maintains that, domestic work is the least regulated informal work.³⁰ More often than not, the nature of understanding between the employer and the employee (worker) arises quintessentially out of an oral contract (of service) to carry out the agreed tasks for a monetary consideration; as a result, in the absence of a formal employer-employee relationship with their employers, no formal documentation ties domestic workers to their employment.³¹ Neetha (2009), Jain and Kodoh (2019), elucidate that, domestic workers are employed on the basis of individual verbal contracts, and the terms of employment especially wages, vary according to the locality, nature and number of tasks performed, social status of the employers, number of members in the household, and prevailing market conditions.³² Due to the lack of legal robustness of the contract, domestic workers are left bereft of employment security, safety,

²⁷<https://www.ilo.org/global/topics/domestic-workers/who/lang--en/index.htm>, last accessed on 06.11.2023.

²⁸Government of India, Ministry of Labour and Employment, <https://labour.gov.in/unorganized-workers>, last accessed on 11.11.2023.

²⁹ Armacost, N. C., & Armacost, N. C. (1994). Domestic Workers in India: A Case for Legislative Action. *Journal of the Indian Law Institute*, 36(1), 53–63. <http://www.jstor.org/stable/43951513>, last accessed on 24.10.2024.

³⁰ Bhoi, S. R. (2015). Women Workers in Unorganised Sector and Provision of Social Security Scheme. *The Indian Journal of Political Science*, 76(3), 588–592. <https://www.jstor.org/stable/26534892>, last accessed on 29.04.2024.

³¹ Dasarathi, A. Invisible labour, visible resistance: Domestic workers fight for rights., May 1, 2024, The Leaflet, Constitution First, <https://theleaflet.in/invisible-labour-visible-resistance-domestic-workers-fight-for-rights/>, last accessed on 28.09.2024.

³² Neetha, N. (2021), Misconstrued Notions and Misplaced Interventions: An Assessment of State Policy on Domestic Work in India. *Indian J Labour Econ*, August 9, 64(3): 543–564. [<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8351567/>], Alternate citation: Neetha N. Misconstrued Notions and Misplaced Interventions: An Assessment of State Policy on Domestic Work in India. *Indian J Labour Econ*. 2021;64(3):543-564. doi: 10.1007/s41027-021-00334-w. Epub 2021 Aug 9. PMID: 34393391; PMCID: PMC8351567, last accessed on 06.12.2023.

healthcare benefits, skill development; as such, the employee is usually at the mercy of the employer which makes the employee vulnerable to exploitation. Dasarathi (2024) confirms that, domestic workers neither receive work-related benefits such as maternity leave and social security, nor are they uniformly legally entitled to decent working conditions, minimum wages, weekly holidays, paid leaves or reasonable working hour.³³ Moreover, as such workers' usually lead a hand to mouth existence, their dependency on the employers is high for tiding over the immediate requirements of cash and other needs, be it financial assistance for child/children's education, health concerns of family members, or dealing with other issues that they may come across in life.³⁴

Domestic workers are independent labourers, who get themselves hired through the informal channels of being recommended by someone. They belong to the unorganised sector where the contract between the employer and the domestic worker is always oral thus, being devoid of the concreteness of the terms and conditions of a written contract. Such oral contracts usually proceed on the basis of an understanding that the worker would carry out the specific tasks prescribed by the employer for which he / she would be remunerated in the form of monthly wages, with or without a weekly off, and in the event of absenteeism from work, would be subjected to a pay cut as determined by the employer. As such workers are employed to carry out specific tasks on behalf of the employer, it could be construed that the legal relationship between the employer and the domestic workers is a contract of agency with the worker being in the fiduciary capacity of an agent in terms of Section 182³⁵ of Indian Contract Act, 1872 when engaged to carry out certain specified tasks on behalf of the employer.³⁶

³³ Dasarathi, A. Invisible labour, visible resistance: Domestic workers fight for rights. May 1, 2024, The Leaflet, Constitution First, <https://theleaflet.in/invisible-labour-visible-resistance-domestic-workers-fight-for-rights/>, last accessed on 28.09.2024.

³⁴ Neetha, N. (2021), Misconstrued Notions and Misplaced Interventions: An Assessment of State Policy on Domestic Work in India, Indian J Labour Econ, August 9, 64(3): 543–564. [<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8351567/>]. Alternate citation: Neetha N. Misconstrued Notions and Misplaced Interventions: An Assessment of State Policy on Domestic Work in India. Indian J Labour Econ. 2021;64(3):543-564. doi: 10.1007/s41027-021-00334-w. Epub 2021 Aug 9. PMID: 34393391; PMCID: PMC8351567, last accessed on 06.12.2023.

³⁵ defines the terms, 'agent' and 'principal' to mean, 'an "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is represented, is called the "principal"'. Source: Nilima Bhadbhade (Ed.), Pollock & Mulla the Indian Contract Act, 1872, (Lexis Nexis, Haryana, 14th edn., 2014) p. 1615.

³⁶ *Qui facit per alium, facit per se / Qui Per Alium Facit Per Seipsum Facere Videtur*, i.e., He who does an act through another is deemed in law to do it himself. This maxim enunciates the general doctrine on which the law relative to the right and liabilities of principal and agent depends. Therefore, whatever a person has power to do himself, he may do so by appointing an agent. Source: Broom, H., (Reprint, 2008), 'A Selection of Legal Maxims, Classified and Illustrated', Universal Law Publishing Co. Ltd., Delhi., pp. 558-572.

LEGISLATIONS PERTAINING TO DOMESTIC WORKERS IN INDIA:

Although a signatory to the ILO's Domestic Workers Convention No. 189, India is yet to ratify it.³⁷ Ratification makes it incumbent upon the ratifying country to implement all the obligations contained under the Convention.³⁸ The implementation may be either by amending the existing legislations in order encompass the provisions of the Convention or by enacting *sui generis* legislations. The justification for non-ratification by the Ministry of Labour and Employment is that “...India ratifies an ILO Convention only when the Government is satisfied that the existing laws and regulations are in full conformity with the said Convention.”³⁹ As India has not ratified the Convention, there exists no specific legislation or provision/s within the existing legislations for domestic workers vis-à-vis the terms and conditions of employment for domestic workers, their hours of work, weekly rest period, stand-by hours, remuneration (minimum wages, mode and time of payment), occupational safety and health, social security, standards concerning - child domestic workers, live-in workers, and migrant domestic workers, dispute settlement, complaints, and enforcement mechanisms. However, the existing legislation that concerns domestic workers along with other employees and workers is the Code on Social Security, 2020 (discussed subsequently in this paper).⁴⁰

Formerly, ‘The Unorganised Workers’ Social Security Act, 2008’ was enacted in order to provide for social security and welfare of unorganised workers. “Unorganised workers” as defined under Section 2 (a) comprise of “home-based workers (domestic workers), self-employed workers or a wage worker in the unorganised sector”. The Act called for formulating schemes vis-à-vis “life and disability cover, health and maternity benefits, old age protection, provident fund, employment injury benefits, housing, educational schemes for children, skill upgradation of workers, funeral assistance and old age homes”. It provided for funding of

³⁷ International Labour Organization

https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102691, last accessed on 13.11.2023.

³⁸ Convention No.189 Decent Work for domestic workers, International Labour Office, Geneva, Source:

https://www.google.com/search?q=Convention+No.189+ILO&rlz=1C5CHFA_enIN870IN870&oq=Convention+No.189+ILO&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCTUyMTdqMGoxNagCB7ACAQ&sourceid=chrome&ie=UTF-8#:~:text=C%20o%20n,%E2%80%BA%20media%20%E2%80%BA%20download, last accessed on 16.11.2024.

³⁹ Government of India, Ministry of Labour and Employment, Rajya Sabha, Unstarred Question No.2508, <https://sansad.in/getFile/annex/260/AU2508.pdf?source=pqars>, last accessed on 16.11.2024.

⁴⁰ See paragraph 4.3 below.

schemes by Central or State Government, and established National and State Social Security Boards comprising of unorganised workers as well as eminent persons from civil society.⁴¹

The recent development that addresses the rights of ‘home-based / domestic workers’, though not exclusively, is ‘The Code on Social Security, 2020’⁴² that aims to provide social security⁴³ to all employees and workers in the organized, unorganized and also other sectors.⁴⁴ It, inter alia, provides for framing of Welfare Schemes for unorganised workers, viz., “life and disability cover, health and maternity benefits, old age protection, education, loss of breadwinner”, etc.⁴⁵ The term “social security” as defined under the Code is analogous to the components of social security viz., “*medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors’ benefit*”⁴⁶ contained under the ILO Social Security (Minimum Standards) Convention, 1952 (ILO-SSC). The Code seems to have been brought about in recognition of the fact that one of the concerning insecurities for workers in the unorganized sector is the frequency of illness, requirement for health-care and at times even hospitalization of such workers and/or their family members. Thus, health insurance plays a significant role in protecting poor households against the peril of health spending.⁴⁷ It provides for the constitution of Social Security Organisations in the form of a Board of Trustees of Employees’ Provident Fund, National Social Security Board and State Unorganised Workers’ Board, and State Building Workers’ Welfare Boards.⁴⁸ This Code inter alia repeals several labour related statutes, including the Unorganised Workers’ Social Security Act, 2008. Domestic workers are covered under the

⁴¹Ministry of Law and Justice, Government of India, <http://legislative.gov.in/sites/default/files/A2008-33.pdf>, last accessed on 27.10.2019.

⁴² With the enactment of The Code on Social Security, 2020, the The Unorganised Workers’ Social Security Act, 2008’ stands repealed.

⁴³ “*Social Security*” as defined under Section 2(78) of the Act means, “*the measures of protection afforded to employees, unorganized workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code*”.

⁴⁴ The Code on Social Security, 2020, https://labour.gov.in/sites/default/files/ss_code_gazette.pdf, last accessed on 06.11.2023.

⁴⁵ Section 109. Source: https://www.indiacode.nic.in/show-data?actid=AC_CEN_6_0_00036_202036_1623221080799&sectionId=54133&sectionno=109&orderno=109, last accessed on 21.11.2023.

⁴⁶ Sundar, K. R. S., & Sapkal, R. S. (2020, October 14). Social Security Code: Another historic opportunity missed! – the leaflet. *The Leaflet – An independent platform for cutting-edge, progressive, legal, and political opinion*. <https://theleaflet.in/social-security-code-another-historic-opportunity>, last accessed on 06.12.2023.

⁴⁷ The Code on Social Security, 2020, https://labour.gov.in/sites/default/files/ss_code_gazette.pdf, last accessed on 21.11.2023.

⁴⁸ Chapter II Social Security Organisations.

definition of ‘wage worker’ under Section 2(90)⁴⁹ of this Act.⁵⁰ However, Dasarathi (2024) is of the view that, the four 2020 labour codes i.e., the Code on Wages, 2019, Industrial Relations Code, 2020, Occupational Safety, Health and Working Conditions Code, 2020, and Social Security Code, 2020 exclude domestic workers from their ambit by explicitly leaving out private households as workplaces. The paper concurs with Dasarathi that, this legislative exclusion leaves domestic workers without legal protection.⁵¹ Futuristically, Neetha (2023) anticipates that, the inclusion of ‘gig workers’ in this Code, and the increase in the employment of such workers through platform-based aggregators is likely to lead to a divide among domestic workers, by creating two segments: those signing up for such aggregators, and the ‘traditional’ domestic worker.⁵²

The existing legal framework is supplemented by the ‘Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013’ colloquially referred to as the POSH Act - a central legislation for, protection against, prevention of, and redressal of complaints of, sexual harassment of women at workplace. This law includes within its ambit women “domestic workers”. In the context of the POSH Act, the Supreme Court of India in *Initiatives for Inclusion Foundation & Anr. v. Union of India & Ors.*,⁵³ has observed that through the Local Committee framework, an aggrieved domestic worker can initiate action against a person residing in the house they work at and that effective implementation the District Officers and Local Committee must be sensitised to the nature of sexual harassment, gendered interactions that occur in the workspace, etc. It provides for an option to the Internal Committee / Local Committee to attempt to settle the dispute between the aggrieved and the respondent through conciliation, provided the settlement contains no monetary component. The Act mandates an employer several duties viz., to provide a safe working environment for

⁴⁹ “wage worker” as defined under “Section 2(90)” of the “Unorganised Workers’ Social Security Act, 2008” means “a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and the State Government, as the case may be”.

⁵⁰ The Code on Social Security, 2020, https://labour.gov.in/sites/default/files/ss_code_gazette.pdf, last accessed on 21.11.2023.

⁵¹ Dasarathi, A. Invisible labour, visible resistance: Domestic workers fight for rights. May 1, 2024, The Leaflet, Constitution First, <https://theleaflet.in/invisible-labour-visible-resistance-domestic-workers-fight-for-rights/>, last accessed on 28.09.2024.

⁵² Neetha N. (2023, June 20). India’s domestic workers: key issues remain swept aside., The Hindu Centre for Politics and Public Policy, <https://www.thehinducentre.com/publications/issue-brief/indias-domestic-workers-key-issues-remain-swept-aside/article66938078.ece#:~:text=This%20imbalance%20is%20further%20aggravated,unenforceable%20contractual%20obligations%2C%20are%20embedded>, last accessed on 06.12.2023.

⁵³ (2024) 1 SCC 779.

the workplace, to display at any conspicuous place in the workplace the penal consequences of sexual harassment, organise workshops and awareness programmes to sensitise employees with the provisions of the Act, provide assistance to a woman who opts to file a complaint vis-à-vis an offence under the penal law, cause to initiate action under the Indian Penal Code, 1860 (presently the Bharatiya Nyaya Sanhita, 2023) or under any other prevailing law, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place.⁵⁴

In *Ajay Malik v. State of Uttarakhand & Anr.*,⁵⁵ while analysing the issue, “*Whether the existing legal framework in India sufficiently protects the rights of domestic workers?*”, the Supreme Court has inter alia observed that vis-à-vis the legal standing of domestic workers in India, there seems to be a degree of lacunae in legislative frameworks, safeguarding the protecting their rights. Post-independence, there have been a plethora of Bills viz., (i) The Domestic Workers (Conditions of Employment) Bill, 1959 – To establish minimum standards for wages, work houses, and employment terms for domestic workers. (ii) The House Workers (Conditions of Service) Bill, 1989 – For formalising employment practices and providing essential safeguards for domestic workers. (iii) The Housemaids and Domestic Workers (Conditions of Service and Welfare) Bill, 2004 – Proposed mandatory registration of domestic workers, required the government to ensure sufficient employment opportunities, medical benefits, and other welfare measures. (iv) The Domestic Workers (Registration, Social Security and Welfare) Bill, 2008 – To establish a registration process for domestic workers and to provide them with social security benefits. (v) The Domestic Workers (Decent Working Conditions) Bill, 2015 – Proposed to include domestic workers under the existing labour laws, such as the Industrial Disputes Act, 1947, for ensuring fair wages and regulated working conditions for domestic workers. (vi) The Domestic Workers Welfare Bill, 2016 – For including migrant and minor domestic workers within its ambit, prescribed working conditions, terms of employment and collection of a cess from employers to maintain a social security fund. It also mandated the registration of workers by employers and placement agencies. (vii) The Domestic Workers (Regulation of Work and Social Security) Bill, 2017 – To regulate the work of domestic workers, prescribe duties for employers and placement agencies, establish Boards for their registration, address issues related to marginalising caused by migration, and to provide for the

⁵⁴ Section 19.

⁵⁵ Criminal Appeal No.441/2025 (Arising out of SLP (Crl.) No.8777/2022) with Criminal Appeal No.442/2025 (Arising out of SLP (Crl.) No.15131/2024) State of Uttarakhand v. Ashok Kumar & Anr., Judgement dated 29.01.2025, SC citation: 2025 INSC 118.

including of domestic workers in significant labour laws. However, none of the aforesaid Bills have materialised into tangible laws or policies.

POLICIES:

Central Government facilities / policies exist in the interest of those in the unorganised sector. However, the actualization of the outcomes of the schemes has to be academically investigated. Following are some of the prevailing schemes that provide for a national database, old age security and insurance cover to unorganised workers:

e-Shram (National Database of Unorganised Workers)⁵⁶ - This facility aims to build a comprehensive National Database of Unorganized Workers (NDUW) in the country by providing a portal for the registration of Unorganized Workers across India.⁵⁷ The idea being to provide a Universal Account Number (UAN) to enable unorganized workers to access various government schemes, benefits, and services. An unorganized worker within the age group of 16-59 years, is eligible to register on the e-Shram portal subject to fulfilling of other criteria.⁵⁸ Sinha and Shalaka (2024) have identified certain practical impediments in the process of registration under the e-Shram portal viz, unavailability of the requisite documents for registration (i.e., identification card, a bank account, and a functioning phone number), lack of digital literacy amongst the workers, and portal being bilingual (website being available only in English and Hindi), issues, absence of certain occupations from the drop-down list (for instance, home-based work and waste segregation, are either absent or have been split into multiple other options).⁵⁹

Pradhan Mantri Shram Yogi Maan-dhan Yojana (PM-SYM) - A scheme formulated for “old age protection and social security of unorganized workers”.⁶⁰ This scheme identifies

⁵⁶ Was launched in August 2021. Source: <https://sansad.in/getFile/annex/259/AU898.pdf?source=pqars> , last accessed on 23.10.2024.

⁵⁷ Government of India, Ministry of Labour and Employment, <https://labour.gov.in/unorganized-workers>, last accessed on 11.11.2023.

⁵⁸ Government of India, Ministry of Labour and Employment, e-Shram, National Database of Unorganised Workers, <https://eshram.gov.in/faqs#:~:text=e%2DShram%20is%20a%20comprehensive,sector%20workers%20across%20the%20country>., last accessed on 23.10.2024.

⁵⁹ Sinha, S & Shalaka, Registering Informal Workers in India: e-Shram, an Opportunity Lost? February 28, 2024, Women in Informal Employment: Globalizing and Organizing (WIEGO), <https://www.wiego.org/blog/registering-informal-workers-india-e-shram-opportunity-lost/>, last accessed on 29.01.2025.

⁶⁰ Government of India, Ministry of Labour and Employment, <https://labour.gov.in/unorganized-workers>, last accessed on 11.11.2023.

unorganized workers to be those engaged as “rickshaw pullers, street vendors, mid-day meal workers, head loaders, brick kiln workers, cobblers, rag pickers, domestic workers, washer men, home-based workers, own account workers, agricultural workers, construction workers, beedi workers, handloom workers, leather workers, audio- visual workers or in similar other occupations”.⁶¹ According to an estimate of the Ministry of Labour and Employment there exist 42 crore unorganised workers in the country.⁶²

Aam Admi Beema Yojana (AABY) - The AABY is a social security scheme, sponsored by the Government of India, that aims to provide “affordable life insurance coverage to the unorganized sector of the population in India”. It was launched in the year 2007 and is administered through the Life Insurance Corporation of India (LIC). Under this scheme, the head of the family or the earning member of the family between 18 and 59 years of age is eligible to apply for insurance coverage.⁶³

The writer espies that although the foregoing policies carry the agenda of honouring the social contract between the State and its citizens, it sets up an age limit (between 18 and 40 years)⁶⁴ eligibility barricade thus, making the scheme restrictive and consequently discriminatory by excluding those beyond 40 years of age. The age limit criterion squarely disregards the provisions of ‘The Code on Social Security, 2020’, which except for building workers⁶⁵ does not provide any upper age limit as one of the criteria for eligibility for registration and social security benefits. No upper limit would enable all those beyond the age of 40 who are circumstantially compelled to work to avail of the benefits of the policies, albeit, the benefits could be proportionately reduced based on age. Unfortunately, the websites related to these policies do not contain corresponding data to corroborate the outcomes the policies envisage to achieve.

⁶¹Government of India, Ministry of Labour and Employment, <https://labour.gov.in/brief-pm-sym>, last accessed on 23.10.2024.

⁶²Government of India, Ministry of Labour and Employment, <https://labour.gov.in/brief-pm-sym>, last accessed on 23.10.2024.

⁶³ My Scheme, <https://www.myscheme.gov.in/schemes/aaby>, last accessed on 23.10.2024.

⁶⁴Government of India, Ministry of Labour and Employment, <https://labour.gov.in/brief-pm-sym>, last accessed on 23.10.2024.

⁶⁵ Section 106.

A *COUP D'OEIL* INTO THE PRACTICAL ISSUES IN THE EMPLOYER – EMPLOYEE RELATIONSHIP BETWEEN THE EMPLOYER AND THE DOMESTIC WORKER:**Employment Agency and the Domestic Worker –**

Across the country, State Governments have made provision for the setting up of employment agencies for registering and placing those opting to be employed as domestic workers. The prospective domestic workers register with such an agency and those needing such domestic help approach the said agency. By being registered with such agencies the worker is assured of lawful terms of work like employment with equivalent pay, reasonable working hours and weekly-offs. However, it has been brought to the notice of this writer (by a few registered workers that she spoke to about these matters) that the non-negotiable terms and conditions that a registered worker agrees to are not always fair to them - as the agency would always secure itself by exercising abundant caution for foreseeable and / or unforeseeable situations. Although these practices indulged in by the agencies may not harm the workers individually, they, *prima facie*, appear to be unscrupulous.

Some of such issues that the registered workers recalled for the writer are:

1. The agency charges a commission for every workplace allotted and this is deducted out of worker's actual earnings.
2. The agency pays the worker what is orally agreed upon, but in reality, the agency is paid a higher amount by the client. Furthermore, the registered worker acknowledges the higher wages at the time of receiving her / his actual wages.
3. The agency reserves the right of allotment of the work-place. With the work-places allotted on a rotation basis (daily, weekly or monthly), these workers do not get the opportunity to get accustomed to a single work-place. This reduces the chances of the workers specializing in certain domestic chores and / or developing at least a working acquaintance with those who avail of their services.

Social Discrimination, Stigmatization, Sexual Harassment, and other issues -

Moghe (2023) argues that, domestic workers face social discrimination when they are not permitted to use lifts and toilets in private housing or are seated on the floor in their employer's

homes.⁶⁶ Thus, harassment and humiliation being an aspect of their lives.⁶⁷ Chandramouli and Kodanrama (2018) have identified adversities such as: denial of minimum wages, healthy work period, safe working conditions, appalling living conditions, economic vulnerability - poor bargaining power, social insecurity, and lack of support networks.⁶⁸ In the context of the POSH Act, Karwa (2022) is of the view that District authorities are significant for ensuring that women from the unorganised sector have a redressal mechanism against sexual harassment. The Act calls for constitution of Internal Complaints Committee and Local Complaints Committee. Karwa (2022) argues that, although the failure to constitute an Internal Committee by the employer attracts a penalty⁶⁹, there exists no specific legal mechanism for ensuring actual accountability of the District Officer.⁷⁰ A study carried by WEIGO⁷¹ on the lives of domestic workers in the state of Madhya Pradesh has revealed a high frequency of, low remuneration, a general lack of leave provisions, the existence of unregulated work hours with no or low occupational health and safety standards being enforced, stigmatization, and sexual harassment.⁷² Dasarathi (2024) adds long working hours, physical and verbal abuse, sexual harassment and meagre wages⁷³ to the woes of a domestic worker. Neetha (2023) corroborates by noting the following issues, low wages, unfair working conditions, absence of leave, increased workload without additional compensation, high level of job insecurity, and arbitrary dismissals.⁷⁴ Given the universality of the adverse attributes of informal work, one can

⁶⁶ Moghe, K. (2023, June 16). International Domestic Workers Day: Lookback at Ghastly Working Conditions in India. *NewsClick*. <https://www.newsclick.in/international-domestic-workers-day-lookback-ghastly-working-conditions-india#:~:text=Miserable%20conditions%20of%20domestic%20workers&text=Several%20studies%20reveal%20that%20domestic,social%20security%20such%20as%20pensions.>, last accessed on 06.12.2023.

⁶⁷ Neetha N., My Workplace, Your Home, A separate law for domestic workers could help reduce their vulnerabilities, 03.02.2025, *The Indian Express*, Mumbai., p. 10.

⁶⁸ Chandramouli, Kodandrama, Women Domestic Workers in India: An Analysis, *International Journal of Innovative Technology and Exploring Engineering (IJITEE)*, ISSN: 2278-3975 (Online), Volume – 8 Issue – 1, November 2018. Source: <https://www.ijitee.org/wp-content/uploads/papers/v8i1/A2526118118.pdf>, last accessed on 22.11.2023.

⁶⁹ Section 26. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

⁷⁰ Karwa, S., India's Workplace Harassment Law Has Failed Informal, Marginalised Workers, October, 3, 2022, *Behan Box*, <https://behanbox.com/2022/10/03/indias-workplace-harassment-law-has-failed-informal-marginalised-workers/>, last accessed on 27.01.2025.

⁷¹ Women in Informal Employment: Globalizing and Organizing.

⁷² Domestic Workers and Social Protection in Madhya Pradesh. Source: <https://www.wiego.org/sites/default/files/publications/file/WIEGO%20Policy%20Brief%20N24%20Madhya%20Pradesh%20for%20web.pdf>, last accessed on 22.11.2023.

⁷³ Dasarathi, A., Invisible labour, visible resistance: Domestic workers fight for rights. May 1, 2024, *The Leaflet*, Constitution First, <https://theleaflet.in/invisible-labour-visible-resistance-domestic-workers-fight-for-rights/>, last accessed on 28.09.2024.

⁷⁴ Neetha N. (2023, June 20). India's domestic workers: key issues remain swept aside., *The Hindu Centre for Politics and Public Policy*, <https://www.thehinducentre.com/publications/issue-brief/indias-domestic-workers-key-issues-remain-swept->

extrapolate that, some of the findings, if not all, may be common to several Indian states and thus, in existence on a national level.

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From the above information and deliberations, this paper deduces the following inferences:

- The work of domestic workers is devoid of adequate institutionalised protection and this makes them very vulnerable on all fronts while they are at work.
- Considering the nature of their employment, effective implementation of laws and schemes that provide social stability would enhance their efficacy.
- The law would have to support the unionisation of such workers so that they could have security also through the collective bargaining mechanism.
- When the work conditions of domestic workers are secured, there arises the possibility of the concerned workers getting complacent and lower their work performance – but due to this laxity, they run the risk of being fired. On the other hand, with their livelihood dependent on being continuously employed, one can safely deduce that a majority of the domestic workers will at least not shirk work and / or dilute their performance. Protecting their work conditions by law, serves as a catalyst to improve efficiency and so work performance.
- The operations of the employment agencies would have to be monitored and audited on a regular basis to eliminate the possibility of any fraudulent practices setting in.
- Contractual security is likely to increase the efficiency outcome of domestic workers who would then have an assurance of invoking the contract in the event of a dispute.
- The writer is of the view that, lack of awareness of the law continues to remain a major hurdle in enabling the deserving subjects of the law from reaping the benefits. In light of the aforesaid, this paper suggests, that domestic workers ought to be made aware of the applicable laws and the schemes framed thereunder by educating them of their rights and the benefits available to them. The awareness could be created by the involvement of Anthropologists, Economists, Lawyers, Sociologists, as well those educated in other Social Sciences, along with public spirited individuals, and NGOs. Universities and educational institutions could include such social activities as a part of the curriculum. Such contributions would educate these workers of their rights and

<https://www.pgcl.ac.in/PGCL%20Law%20Review/article66938078.ece#:~:text=This%20imbalance%20is%20further%20aggravated,unenforceable%20contractual%20obligations%2C%20are%20embedded>, last accessed on 06.12.2023.

thus help them in making informed decisions vis-à-vis which schemes would best serve them and which law they can fall back upon in case they feel violated at work. Such academic involvement would ensure that the laws promulgated for the betterment of the domestic workers does indeed truly benefit them.

CONCLUSIVE COMMENTS:

Domestic workers, like the currently legally protected workers, have the right to work in just and humane working conditions, and to live with dignity. However, as they continue to languish in the unorganised sector, they work without assured dignity. Moghe (2023) points out that several studies indicate that, nationwide, domestic workers toil for exceedingly long hours, are denied minimum wages, and are deprived of a day off or paid annual and sick leaves, maternity benefits, as well as social security such as pension, retirement benefits, or severance pay after a long tenure with a particular employer.⁷⁵ High dependence on the employer for sustenance makes domestic workers susceptible to exploitation and this needs to be rectified by the enactment of appropriate *sui generis* laws for employment regulation of domestic workers by implementing the minimum standards laid down under ILO's Domestic Workers Convention No.189. These laws, in order to ensure fairness, justice and respect, should lead to guaranteeing domestic workers with:

Wages that are fixed on the basis of the domestic chore(s) performed. According to John Davidson in his treatise, *The Bargain Theory of Wages* (1898), "*Wages are to be regarded as determined in the way in which all bargains are concluded – partly, by the estimate which each party to the bargain has formed of the value of the subject of the bargain, and partly, by the comparative strength of the bargain, and, partly by the comparative strength and knowledge of the bargainers in bargaining.*"⁷⁶ One of the ways of applying this theory regarding the fixation of wages could be by implementing the system of wage cards or rate cards as developed and put in practice by the All Meghalaya Domestic Workers Union and Gharelu Kamgar Sanghatan,

⁷⁵ Moghe, K. (2023, June 16). International Domestic Workers Day: Lookback at Ghastly Working Conditions in India. *NewsClick*. <https://www.newsclick.in/international-domestic-workers-day-lookback-ghastly-working-conditions-india#:~:text=Miserable%20conditions%20of%20domestic%20workers&text=Several%20studies%20reveal%20that%20domestic.social%20security%20such%20as%20pensions.,> last accessed on 29.04.2024.

⁷⁶ Davidson, J. (1898), *The Bargain Theory of Wages*, A Critical Development from the Historic Theories, together with an Examination of certain Wages Factors: the Mobility of Labor, Trade Unionism, and the Methods of Industrial Remuneration. *G. P. Putnam's Sons, Stationers' Hall, London.*, p. 4., Source: <https://archive.org/details/bargaintheoryofw01davi/mode/2up?ref=ol&view=theater&q=bargain+>, last accessed on 30.10.2024.

Gurgaon.⁷⁷ In the wake of ‘outside options’⁷⁸ having increased the demand for unskilled workers who could only work as domestic help earlier, the rise in the income of the middle-class in neoteric times has increased the demand for domestic workers, their supply however, driven by the changes in ‘outside options’, has decreased. Middle-class attitudes have failed to keep up with the actualities of the current growth scenario, as well as with their own rising incomes, for wages at the lower end of the income distribution (including the domestic-worker sector) have not increased at the same rate as wages in the upper end of the income distribution.⁷⁹ Sarangi (2020) corroborates that, true equilibrium wages must consider things like the lack of holidays, odd work hours or psychological abuse that domestic workers have to suffer.⁸⁰ Wages apposite to the work carried out would not only improve the standard of living of such domestic workers, but, would also provide them with dignity of labour.

Emulating the practice in the formal employment sector/organised sector, a domestic worker should be able to avail of certain number of holidays each month with a caveat that he/she informs the employer of the same in advance. Thus, a weekly holiday, that is settled at the time of being employed by the client, must be assured to the domestic worker.

Adequate safety measures (with the onus being on the employer) should be put in place wherever the nature of work exposes them to infections (for instance, where they are involved in helping the sick and infirm people/caring for pets, etc.).

An annual paid leave should be guaranteed along with continuation of work post the leave. Again, the substitute (contracted) domestic worker should not replace the original worker, without the latter being given sufficient notice and/or due compensation, monetary or equivalent work and pay elsewhere.

⁷⁷ Dasarathi, A. Invisible labour, visible resistance: Domestic workers fight for rights. May 1, 2024, The Leaflet, Constitution First, <https://theleaflet.in/invisible-labour-visible-resistance-domestic-workers-fight-for-rights/>, last accessed on 28.09.2024.

⁷⁸ Benefits that can be obtained by quitting the current job in favour of the next-best or ‘outside option’. Given all the easy access to resources in cash or kind, it is no longer gainful to seek employment as domestic help. ‘Outside options’ being an outcome of liberalization and economic growth having ensued job opportunities for skilled and unskilled labour, welfare programmes that provide wage support for instance, Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA), food grain subsidies, midday meals to school children and other in-kind entitlement benefits. Sarangi S., (2020), ‘The Economics of Small Things’, Penguin Books, Penguin Random House India, Pvt. Ltd., Haryana, Pp. 73-74.

⁷⁹ Sarangi S. (2020), The Economics of Small Things. Penguin Books, Penguin Random House India, Pvt. Ltd., Haryana, p. 75.

⁸⁰ Sarangi S. (2020). The Economics of Small Things. Penguin Books, Penguin Random House India, Pvt. Ltd., Haryana, p. 75.

An adequate notice period should be the norm prior to termination of employment, subject to financial compensation if such a notice is not served.

Access should be given to Provident Fund like facilities and are paid an annual bonus (the rate determined as per the existing law).

A regular monitoring and auditing of the registered employment agencies by the Labour Commissioner's Office to ensure that no mala fide activities are undertaken by these agencies.

In view of the above, the writer suggests that caution should be exercised to prevent legal stringency from becoming a bane for these workers as the legal boons conferred on them could dissuade employers from hiring them.

In *Shramjeevi Mahila Samiti v. State (NCT of Delhi) & Anr.*,⁸¹ the Supreme Court has observed that unorganised workers require proactive help, in getting themselves registered under the Unorganised Workers' Social Security Act, 2008 in order to avail the benefit of any scheme. In this regard, services of para-legal volunteers attached to Taluk Legal Services Committees can be availed for purpose of identifying domestic workers and getting them registered under Section 10, in collaboration with officers concerned under Labour Commissioner of State. Thus, awareness and assistance are imperative for enabling domestic workers to access the rights conferred upon them under the Unorganised Workers' Social Security Act, 2008 as well as the ensuing policies and schemes.

The Supreme Court in *Ajay Malik v. State of Uttarakhand & Anr.*,⁸² has directed the Ministry of Labour and Employment in tandem with the Ministry of Social Justice and Empowerment, the Ministry of Women and Child Development, and the Ministry of Law and Justice, to jointly constitute a Committee comprising subject experts to consider the desirability of recommending a legal framework for the benefit, protection and regulation of the rights of domestic workers.

Bearing in mind the nature of work involved in the vocations of the unorganised sector, the writer of this paper posits that those engaged as unorganised workers are circumstantially driven into the unorganised sector. The schemes such as e-Shram and AABY by putting an

⁸¹ (2022) 16 SCC 508.

⁸² Criminal Appeal No.441/2025 (Arising out of SLP (Crl.) No.8777/2022) with Criminal Appeal No.442/2025 (Arising out of SLP (Crl.) No.15131/2024) State of Uttarakhand v. Ashok Kumar & Anr., Judgement dated 29.01.2025, SC citation: 2025 INSC 118.

upper age limit eligibility criterion fail to acknowledge that those beyond the age of 40 and 59 respectively, may be equally needy of the benefit of the respective schemes as those fitting the criterion, for it is circumstances that require such workers to continue their toil in this sector.

This paper was an attempt to show that, State is... *“an institution that that has arisen out of the social needs of humans and governments, like individuals, are bound by the rules of law derived from social necessity”*,⁸³ and thus, it would be apt to quote Fichte’s⁸⁴ assertion that , *“...State must guarantee everyone the right to existence”*.⁸⁵ It is thus incumbent upon the Government to honour the social contract that exists between the State and its citizens to bring about effective legislations and corresponding policies to ensure domestic workers the human right of employment with dignity, for *“Human dignity is the quintessence of human rights”*.⁸⁶

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⁸³ Leon Duguit (1859-1928), French philosopher, <https://www.britannica.com/biography/Leon-Duguit>, last accessed on 22.11.2023.

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⁸⁶ Justice Verma, J. S. (Chief Justice of India, Retd.), (2002). Human Rights Redefined: The New Universe of Human Rights. Journal of the NHRC, Vol. 1, 2002, pp. 1-17, Source: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nhrc.nic.in/sites/default/files/NHRCJournal2002.pdf, last accessed on 11.11.2024.

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