

A STUDY ON THE NATIONAL LEGISLATIONS TO PROTECT RIGHTS OF DOMESTIC WORKER

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INTRODUCTION

The Indian Labour Laws intended to defend workers' rights apply exclusively to enterprises or industries with a specific number of employees. Initially, domestic work was not considered 'work' in terms of economic contribution to the country. Furthermore, the site where domestic servants worked was deemed the employer's residence rather than their workplace. Domestic workers' rights are not adequately protected by India's legal system. Politicians and social activists of all hues have often called for the creation of a legislative framework to protect the rights of domestic workers. However, anecdotal information suggests that these requests have gone unanswered.

In India, approximately 50 million individuals work as domestic servants, with women accounting for more than 75% of the workforce. There is currently no explicit legislation in place to safeguard the rights of domestic workers in the unorganised sector. However, many regulations have been created to safeguard both the organized and unorganized sectors, and some of these laws apply to domestic workers. Domestic labor is recognized as 'women's job' since it is considered an inherent obligation of women to conduct household tasks. However, several regulations have been simplified to preserve the rights of unorganised workers, which also include domestic workers. The laws that implicitly include domestic servants under their scope are:

The Children Act, 1933 bans youngsters from promising their work. This act defines a kid as follows: "*child means a person who is under the age of fifteen years*". Furthermore, the aforementioned Act defines the commitment to promise a child's labor as follows: "*an agreement, written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilized in any employment*". The Act punishes those who enter into an arrangement for such employment. It punishes both the parent, guardian, or person who made the arrangement, as well as the person who employed the youngster. Thus, the terms of this Act apply to female domestic workers as well.

The Employer's Liability Act, 1938 states that in circumstances of employee injuries, certain defenses cannot be brought in a lawsuit for damages against the employer. The Employer's Liability Act of 1938 defines an employee as follows: "*any person who has been entered into or works under a contract of, service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, oral or in writing.*" The term "employer" in this Act refers to any person who employs a worker, regardless of whether the employer is incorporated, a managing agent of the employment, a legal representative of the deceased employer, or a person who enters into a contract with the worker to provide services to another person. This broad definition of the employer also includes placement agencies.

The Minimum Wages Act of 1948 established a minimum wage rate for specified occupations. Initially, this law was enacted to defend workers' rights in the organised sector. However, other states have enacted this Act to safeguard unorganised workers as well. By 2013, eleven states and one Union Territory have included domestic labor in the Schedule to the Minimum Wages Act of 1948. The states are listed below: Andhra Pradesh, Bihar, Dadra

and Nagar Haveli, Haryana, Jharkhand, Karnataka, Kerala, Meghalaya, Odisha, Punjab, Rajasthan, Tripura, and Tamil Nadu. The unfortunate fact is that more than half of the states have yet to establish a minimum wage for domestic workers.

The Employees' State Insurance Act, 1948, was established by the Government of India to give benefits to workers in the organised sector in the event of an employment accident, sickness, or maternity. The government enacted this law only to defend the interests of organized workers. The Labour Ministry established a pilot plan in 2016 to extend the applicability of the Employees' State Insurance Act, 1948 to domestic workers in the state of Hyderabad and the National Capital Territory of Delhi.

However, domestic servants had little advantages. They were not eligible for maternity or sickness benefits, dependents' benefits, disability benefits, or any need-based benefits. Furthermore, the pilot program does not consider the employer's residence as a workplace because domestic workers are classified as self-employed. Thus, while this trial project may benefit certain workers, it fails to guarantee domestic workers' rights in a broader sense.

The Bonded Labour System (Abolition) Act of 1976 terminated India's bonded labour system. Thus, the Act also protects domestic workers who may be exploited or compelled to labor. *Bandhua Mukti Morcha v. Union of India* also challenged the system of bonded labour. It was argued that a bonded labour system would subject workers to deplorable working conditions. The bonded workers will be released and sent for rehabilitation.

The young Labour (Prohibition and Regulation) Act of 1986 was passed by the Parliament to prevent young workers from working in dangerous industries while also regulating their working conditions and hours. According to the Act, a child is defined as someone under the age of fourteen. Domestic employment was designated as 'hazardous child labour' by the Indian government in 2006. According to the Act, 'No child shall be engaged or authorized to work in any of the activities specified in Part A of the Schedule'. Part A of the Schedule to the said statute says 'An occupation related with- 'the employment of children as domestic workers or servants'.

Thus, the Act fully prevents adolescents from engaging in household duties. However, in 2016, the Parliament revised the Child Labour (Prohibition and Regulation) Act, 1986, renaming it The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. The Act forbids minors from working in any occupation and teenagers from working in dangerous occupations. The Child and Adolescent Labour (Prohibition and Regulation) Act of 1986 defines an adolescent as follows: "*a person who has completed his fourteenth year of age but has not completed his eighteenth year.*" According to the Act, a teenager can work in a non-hazardous enterprise, such as a shop, restaurant, hotel, theatre, or other place of amusement. The Act forbids the hiring and process of children, which may include female domestic workers under the age of 14.

The Sexual Harassment of Women at Workplace Act, 2013- Globally, there are specific international documents, such as the Convention on the Elimination of All Forms of Discrimination Against Women, that grant women the freedom to work with dignity and protect them against sexual harassment at work. Even in India, the Constitution of India, through its Preamble and Fundamental Rights, guarantees all men and women the right to equality and the right to live with dignity. Thus, the Constitution gives every woman the right

to a harassment-free and safe workplace. As a result, it was critical to develop legislation that protects women from sexual harassment at work. In order to supplant the Vishaka Guidelines established by the Supreme Court in the case of Vishaka & Others v. State of Rajasthan & Others, the Parliament approved the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013.

The Act attempts to protect women from sexual harassment in the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013 is law that affects domestic workers. According to Section 2 (e) of the legislation, a domestic worker is defined as follows: *“any woman employed directly or through any agency to do household work for remuneration, on a temporary or permanent, part – time or full – time basis, but it does not include any employer’s family member”*. The Act's scope now includes the domestic worker's household employer. This Act applies to all workplaces since it clearly includes a residential place or a house in the definition of workplace. Thus, this Act also applies to households where domestic servants are hired.

Since time immemorial, governments, social activists, and politicians have attempted a variety of steps to improve the working circumstances of domestic workers. These initiatives took the form of measures introduced in Parliament, but none went into action.

The Domestic Workers (Conditions of Service) Bill, 1959, and the All India Domestic Servants Bill, 1959⁷³ were the first attempts to enact a national legislation governing domestic workers' services. However, none of the bills were enacted by Parliament and became Acts. These measures included regulations controlling maximum working hours, weekly rest intervals, minimum salaries, casual leaves, yearly leave, and 15 days paid holidays per year, as well as a formal registration of domestic workers to be kept by law enforcement officers.

Furthermore, to safeguard the rights of domestic workers, the Domestic Workers (Conditions of Service) Bill, 1972, was proposed in Lok Sabha, followed by the Domestic Workers (Conditions of Service) Bill, 1977, and the House Workers (Conditions of Service) Bill, 1989. Yet again, the administration did not respond positively to these legislation. All of the politicians' and social activists' attempts to introduce these laws in Parliament appear to have been in vain.

Shrimati Cariappa, a former MP from Karnataka and a member of the Indian National Congress Party, made the first concrete attempt in 2004 to regulate the conditions of domestic workers by introducing the Housemaids and Domestic Servants (Conditions of Service and Welfare) Bill, 2004 in Parliament. The measure aimed to safeguard domestic workers from being abused by employment agencies or employers. Furthermore, the measure specified working standards for domestic workers, such as minimum salaries, vacations, and working hours. The law also called for the mandatory registration of domestic workers. However, like other measures, this one never generated any good discussion and was not enacted by Parliament to become an Act.

In 2008, the National Commission for Women (NCW) introduced the Domestic Workers (Registration, Social Security & Welfare) Act, 2008, after considering the necessity for particular law to control domestic workers' working conditions and protect them from exploitation. Domestic workers were unable to profit from the Act since it stayed just on paper and was never implemented.

To protect domestic workers from sexual harassment, malnutrition, harsh working conditions, and unpaid salaries, the National Commission for Women (NCW) proposed the Domestic Workers Welfare and Social Security Bill, 2010. The proposed bill specifically prohibited children under the age of 18 from working as domestic workers. Section 15 of the law required mandatory registration for employers, service providers, and domestic workers. This statute also required domestic servants to work 9 hours per day, or 48 hours per week in a household. Furthermore, if a domestic worker works overtime, the employer must pay double the amount of usual wages. Furthermore, this measure requires employers to provide weekly time off to domestic workers, regardless of whether they are full-time or part-time employees. However, NCW's efforts were in vain because the bill's text remained only a suggestion.

In 2017, MP Shri Shankar Prasad Datta introduced the Domestic Workers (Regulation of Work and Social Security) Bill, 2017, with the goal of providing social security to domestic workers and improving their working conditions through regulation. The bill includes provisions such as the establishment of the Domestic Workers Social Security Fund, the formation of a Central Advisory Committee comprised of individuals who represent domestic workers and their associations or unions, and the mandatory registration of all domestic workers, employers, and service providers (middleman/placement agency).

In 2018 the Employment Agencies Bill was submitted to govern the functioning of private placement agencies in India for the benefit of employees, including domestic servants. This was done to improve the social security of workers. The law defines a domestic worker as someone who works for pay in any family, either temporarily or permanently, full-time or part-time, via an agency. It has imposed a minimum age of 18 for employment in domestic labor. It has also included certain requirements pertaining to licensed employment agencies.

The position for domestic workers remains unaltered. Our country's laws are still inadequate to address the demands of domestic workers. Domestic workers are still exploited, and existing regulations fail to address the issues that arise over the course of home employment. In conclusion, the Indian Legislature has overlooked the condition of domestic workers. There is an urgent need to create legislation to govern the working conditions of domestic workers and safeguard their rights.