SITUATION OF DOMESTIC WORKERS IN INDIA

By: DIVYANSH HANU

INTRODUCTION

The Domestic Workers come from the vulnerable communities and the backward areas. Majority of them are poor, illiterate, unskilled and do not understand urban labour market.

The work done by the Domestic Workers is undervalued, underpaid and poorly regulated.

Lack of decent wages, work conditions and defined work time, violence, abuse, sexual harassment at the workplace, victimization at the hands of traffickers or the placement agencies, forced migration, lack of welfare measures and the lack of skill development avenues resulting in the stagnation are major issues that they face.

EXTENT OF PROBLEM FACED BY THE DOMESTIC WORKERS

In 1931, Census classified 2.7 million people as the “servants.” By 1971, Census found just around 67,000 people doing that work. But between the years 1991 and 2001 there was a 120% increase in numbers of domestic help. Census shows numbers of female workers aged 15-59 went up 17% between the years 2001 and 2011. In the Cities, it went up over 70% from around 14.7 million in 2001 to 25 million in 2011.

Domestic Workers are highly exploited and denied just wages and humane working conditions. They are paid well below Minimum Wages for unskilled or semi-skilled workers.

Vast majority of the live-in domestic workers work a minimum of 15 hours a day, seven days a week. The Part-Time workers often work in 3-4 different houses for nearly 8-10 hours every day. Working hours of the domestic workers can go from 8 to over 18 hours a day.

Wages, leave facilities, medical benefits, and the rest time are at employer’s mercy.
SITUATION GOING OUT OF HAND

Moreover, they are often victims of suspicion. If anything goes is missing in house, they are the first to be accused with threats, physical violence, police interrogation, conviction, and even dismissal.

A great number of live-in domestic workers are recruited from the rural or tribal areas. They have to adapt to alien environment, culture, and the language. They are often not allowed to use telephone and are prohibited from socializing with the friends and the relatives who are living and working in same city.

Most recent incidents that shocked the nation was in Mahagun Moderne in Noida sector 78 burst into the news on July 12, 2017 when the hidden world of invisible workers and insensitive employers came into view. There was a riot-like situation in the society located in National Capital Region after Zohra Bibi, a domestic worker was found in basement of the society in unconscious condition. She alleged that she was beaten up by her employers for stealing money, but somehow she managed to escape the torture and reached the basement.

What happened in Noida is not the first time a domestic worker has complained of mistreatment. There are innumerable incidents, one of such horrific incident is of Ten-year-old Sonu from Bhopal who was employed by an affluent family in Lokhandwala, Mumbai. In June 2006, was found Sonu trying out a lipstick that belonged to the employer. For this supposed crime, the child was tortured, beaten and left to bleed to death. The family tried to portray the incident as a suicide but their ill deeds were caught and all four members of the family were sentenced to life two years later.
CURRENT LEGISLATIONS ARE INEFFECTIVE

Whenever such incidents come to light, there is some discussion about conditions of the domestic workers. But little changes. There are some imminent questions that are required to answered such: Why does this happen? Why does Indian society turn a blind eye to such crass exploitation? How do the generations of the Indians grow up accepting that there are some people whose life’s mission is to serve and clean up? How do we accept concept of a “servant”?

Labour legislations in India show that the domestic workers are not included in Scope of several labour laws because of the constraints in definitions of “workman”, “employer” or “establishment”.

Nature of their work, specificity of employee-employer relationship and workplace being a private household instead of a public place or private establishment, excludes their coverage from the existing laws.

Even Placement Agencies escape from ambit of the labour laws, because of such definitional issues.

To include the Domestic Workers under these laws, definitions will have to be amended. Some Laws that need such amendments include Minimum Wages Act, 1948; The Maternity Benefit Act, 1961; Workman’s Compensation Act, 1923; Inter-State Migrant Workers Act, 1979; Payment of Wages Act, 1936; Equal Remuneration Act, 1976; Employee’s State Insurance Act, 1948; Employees Provident Fund Act, 1952; and the Payment of Gratuity Act, 1972.

LEGAL DEVELOPMENT IN INDIA

There has been an attempt at creating a law within the Country in form of ‘Domestic Workers Welfare and Social Security Act, 2010’ Bill, drafted by the National Commission for Women (NCW) which attempted to bring this large and vulnerable work force of Domestic Workers into the mainstream and help address the complaints about the unpaid wages, starvation, inhumane work hours and verbal, physical and sexual abuse. Proposed law was meant for the Domestic Workers above 18 years of age and clearly stated that no child shall be employed as a domestic worker.
But little progress has been made in passing this bill so far. It is now imminent that India revived debate on the issue relating to the Domestic Worker.

After the Independence, Government passed more than 40 Central Labour Legislations. But these legislations have benefited only workers employed in the organized sector, when in actual fact about 93 per cent of the labour falls into the category of unorganized sector.

**State of Tamil Nadu** included the Domestic Workers in their Manual Workers Act and created a separate Board for them. While Maharashtra is actively considering a law for them. Under Section 27 (A), Maharashtra State Public Service Conduct Act, 1997, Government employees are prohibited from employing children below 14 as Domestic Workers.

Such rules can be found in the rule books of 18 other States. Karnataka has notified minimum wages for domestic workers and Kerala has followed suit. The Government of India has amended the Central Civil Service Conduct rules to prohibit civil servants from employing children below the age of 14 as Domestic Help.

**State Governments of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan and Tamil Nadu** have taken several steps to improve working conditions of Domestic Workers and to provide access to the Social Security Schemes.

State of Karnataka has allocated amount of ₹10 crore has been allocated in this State budget for issuance of Smart cards to all the unorganised sector workers, including domestic workers. The issuance process has begun and the cards would all be issued in a couple of months.

Even though 8 States, Karnataka, Tamil Nadu, Kerala, Andhra Pradesh, Rajasthan, Orissa, Bihar, and Jharkhand, have a fixed minimum wage for domestic workers, violations still take place because of a lack of complaints mechanism. In most cases, Wage Rate is fixed arbitrarily, is too low and irrelevant to those working in the urban areas where the cost of living is much higher.
Government of Rajasthan has enforced fixed minimum wages for Domestic Help and has set limited working hours. The move comes after the A State Labour Department's notification dated December 21, 2015, which had mentioned implementation of the labour reforms in unorganised sector. Minimum Wage has been set at Rs 5,642 per month for an eight-hour which will include cooking, washing, baby sitting and other daily chores. It is exclusive of food, clothing, accommodation or any other benefits.

The major problem that is faced by the Domestic Workers is that they still don’t have a legal definition as to what constitutes “Domestic Worker” under any Indian Law.

In August 2016, Congress MP Shashi Tharoor introduced the The Domestic Workers’ Welfare Bill, 2016 in the Lok Sabha.

Here is a look at some of its important features, which are as follows:

1. Private Household and a Workplace

Bill defines ‘Domestic Work’ as work performed in or for a private household(s) and includes cooking, cleaning, housekeeping, driving, gardening, child care and old-age care, but does not include work related to businesses run from private households.

Specifying households as a workplace and not treating it as a ‘private space’, would, in itself be a significant step in securing the rights of domestic workers.

2. Includes Migrant Workers

In the recent confrontation between domestic workers and residents of Mahagun Moderne in Noida, migrant workers were identified and banned. Proposed Bill defines ‘Domestic Worker’ as a person employed to do domestic work for a remuneration, whether in cash or in kind, for one or more employers by staying at the household premises or otherwise and includes casual, temporary, contractual or migrant workers.
3. Provision for Children under 18 employed as the Domestic Workers

In the 2010 Bill proposed by National Commission for Women, there was a zero-tolerance towards employing domestic workers under age of 18. While the 2016 Private Member’s Bill defines a ‘Minor Domestic Worker’ as one who is above the age of sixteen years, but below the age of eighteen and has completed compulsory elementary education.

4. Enhanced Definition of Wages

Under Proposed Bill, ‘Wages’ means all remuneration expressed in terms of money, but does not include the value of any accommodation (rent), supply of light, water, medical attendance etc. The employer would also be liable to extend his/her contribution towards any social security scheme or insurance, give travel allowances or concessions and any other compensation on discharge.

5. Contract Registration

Employer or Placement Agency would have to, within two months of the commencement of the employment of a domestic worker, register the employment agreement and get it verified by either the local Panchayati Raj institution or the local urban body, the resident welfare association, or a non-profit organisation working among domestic workers.

While the intent of the Bill cannot be disputed, it is least likely to be a priority and most likely to be met with resistance on practical aspects of implementation. And while the legislation alone won’t solve bias and discrimination that the Domestic Workers in our country face, a healthy debate could go a long way in influencing attitudes among employers.

Draft of National Policy for Domestic Workers is under consideration of the Government. The salient features of the Policy are as under:

i. Inclusion of Domestic Workers in the existing legislations

ii. Domestic workers will have the right to register as workers with the State Labour Department. Such registration will facilitate their access to rights & benefits accruing to them as workers.

iii. Right to form their own associations, trade unions
iv. Right to have minimum wages, access to social security, protection from abuse, harassment, violence

v. Right to enhance their professional skills

vi. Protection of Domestic Workers from abuse and exploitation who are recruited to work abroad

vii. Domestic Workers to have access to courts, tribunals, etc.

viii. Establishment of a mechanism for regulation of placement agencies.

**INTERNATIONAL RESOLUTION**

According to the estimates by the International Labour Organisation (ILO), there are at least four million domestic servants in India. Most of them are the migrants, women, many are minors, and belong to lowest end of Economic Spectrum.

India is a signatory to ILO’s 189th convention, known as Convention on the Domestic Workers; but has not ratified it yet.

Convention mandates that the domestic workers be given daily and weekly rest hours, their payment must meet minimum wage requirement, and that they should be allowed to choose place where they live and spend their leave.

Ratifying States are required to take the protective measures against violence against such workers and are required to enforce the minimum age for the employment purposes. However, since these provisions are not binding on those countries that have not ratified the convention, India is not obliged to enforce these recommendations.

A major victory for recognition of domestic workers' rights was achieved on June 16, 2011 when the Domestic Workers Convention was adopted at the 100th International Labour Organisation (ILO) Conference in Geneva which sought to bring in an estimated 53 to 100 million workers worldwide under the realm of labour standards. The Convention recognizes the “significant contribution of domestic workers to the global economy” and says this work is “undervalued and invisible, and mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities.”
**WAY FORWARD**

Only an integrated law can regulate Placement Agencies and conditions of Domestic Work and provide Social Security to them. Mere extension of the Shops & Establishments Act, to register the Placement Agencies as has been done in Delhi and which is proposed nationally, is not the real solution.

According to National Human Rights Commission (2002-2003), about 90 per cent of the trafficking in India is internal.

Non-availability of the jobs in rural or tribal areas, such as Jharkhand, facilitates continuous supply of the women workers to Delhi and the other cities. India is also a source and transit route for the trafficking women and girls to Middle East for the domestic work. In this process of migration there are risks, particularly because of the deceptive recruitment practices or abuses at hands of the workers’ employers.

Only Central Law can meet requirements of regulating the Domestic Workers sector since workers also frequently cross the inter-state boundaries. The Domestic Workers are also caught in trap of the agents who supply them to the placement agencies or even harass or traffic them for other forms of forced labour is a reality.

There is also a need to develop a separate piece of legislation dealing exclusively with Crimes committed against the Domestic Workers like Murder, Rape, Sexual Assault, Sexual harassment etc. Such piece of legislation should be brought into effect on the lines of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Dowry Prohibition Act, 1961 which exclusively deal with crimes committed against a particular section of the society. Thus, similarly Parliament should enact a law in relation to provide crime committed against the Domestic Workers where the workers are provided time bound and effective justice.

Government of India has developed an Integrated National Plan of Action against the Trafficking and is taking steps to put some remedial measures in place in form of Integrated Anti-Trafficking Units and Anti-Trafficking Nodal cells, but still there is a need for a more comprehensive legislation on the labour trafficking.

At the same time, Law regulating Interstate Migration, Inter-State Migrant Workmen Act, 1979, will also require major amendments.