

Domestic workers

Laws and legal Provisions in India

STRENGTHENING WOMEN'S ECONOMIC SECURITY AND RIGHTS

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Contents

| | |
|---|-----------|
| ABSTRACT | 3 |
| OVERVIEW | 4 |
| GENERAL INTRODUCTION | 5 |
| What Happens:- | 6 |
| How it happens:- | 7 |
| Why happens:- | 8 |
| Situation of Law at Present | 9 |
| Statutes:- | 9 |
| Justice J. S. Verma Committee’s Recommendation:- | 12 |
| Bills:- | 12 |
| Task-Force Reports:- | 13 |
| National Advisory Council (NAC) Report:- | 15 |
| ILO Convention C 189:- | 16 |
| Cases:- | 17 |
| Various statutes and possibility to cover domestic workers:- | 18 |
| Conclusion:- | 19 |

Key Words: - Domestic workers, Minimum wages, Domestic workers protection act, exploitation of domestic workers, care economy, unorganised sector.

ABSTRACT

This paper has been written on a very new and immerging issue of domestic workers and their exploitation in India. The language of the paper has been kept very simple and descriptive so that even a layman who does not have much sense of Indian laws can understand and comprehend the situation of present domestic laws without any difficulty.

The paper will start with an overview to discuss the post-independent situation of workers and the laws that were brought in by the legislators to vanish the Indian societal problem of Jameedari system.

Following overview, paper will move to a general introduction of the word “Domestic workers” and will try to give simplest definition of the term in Indian context and will try to exemplify the situation of domestic workers under three heads:- WHAT, HOW AND WHY to illustrate the situation the domestic workers with relation to care economy and unrecognised sector.

In its third part paper will try to show the dismal situation of law for protection of domestic workers in present scenario. It will also talk about the recent developments made for protection of domestic workers in India. Under this head, paper will discuss mainly about different statutes, Justice J.S. Verma Committee’s report, Pending bills, Task force report, National Advisory Council’s report, International Labour Organization’s convention C 189 for domestic workers and various other cases.

At the end, the paper will conclude with a simple remarks with some suggestions to the government. The conclusion will take optimistic approach to deal with the existing problems.

OVERVIEW

After the independence in 1947, there had been many changes in India, one of which was “*the recognition of workers’ rights*”. Post year 1947, it was the period when *Nehru* diligently was trying to root-out the social and cultural differences between different classes in Indian society. His efforts were also closely related to “*shrinking the colonial effect in India*” by dissolving all the ill practices and customs which had become a deep rooted problem in India.

By then it was realised by the policymakers that the lower and backward classes of society i.e. all kind of workers who are involved in some kind of menial work, can also play a very important role in inclusive development of India. If the workers are given protection and if they can be vested with some basic natural rights, the class of underprivileged workers can too play an important role in national-development which will result in country’s Gross Domestic Product.

Then the parliament of India had to pass some statues so to protect the workers who are part of recognised list of schedule employments and, thus it enacted :- the factories act- 1948², Minimum wages act- 1948³⁴, Beedi⁵ and Cigar workers Act- 1966⁶ etc. But in none of the statutes of Central government, domestic workers were recognised under the list of scheduled employments. It was never felt by the policymakers that this is the high time to regulate or to

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I am extremely grateful to Professor Arjya B. Majumdar for his efficient direction. Had he not been there, it would have become very difficult for me to grasp the technical cognizance of a subject like Domestic workers.

²ilo.org. n.d. India.The Factories Act, 1948. [online] Available at:

<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm> [Accessed: 18 Feb 2014].

³: The Ministry of Labour & Employment. n.d. MINIMUM WAGES ACT, 1948. [online] Available at:

http://labour.nic.in/upload/uploadfiles/files/Divisions/wage_cell/4fd9bebab42a0mwact.pdf [Accessed: 18 Feb 2014].

⁴International Labour Organisation.n.d.The Minimum Wages Act, 1948. [online] Available at:

<http://www.ilo.org/dyn/travail/docs/623/Minimum%20Wages%20Act%201948.pdf> [Accessed: 18 Feb 2014].

⁵ **A Thin, Often Flavored Indian Cigarette Made Of Tobacco Wrapped In A Tendu Leaf.**

TheFreeDictionary.com. n.d. *beedis*. [online] Available at: <http://www.thefreedictionary.com/beedis> [Accessed: 11 Mar 2014].

⁶Ministry of Labour & Employment.n.d. The BeediAnd Cigar Workers (Conditions Of Employment) Act, 1966. [online] Available at:

http://labour.nic.in/upload/uploadfiles/files/ActsandRules/Service_and_Employment/beedi%20act.pdf [Accessed: 18 Feb 2014].

protect the rights of “domestic workers” in India since it was believed by the legislators and policy makers that “domestic work” is something which does not actually fall into the category of employment and the service rendered by these workers are based on their personal relations with the employer.

Still, there is an urgent need to understand the contribution of domestic workers in GDP. Policy makers are still critical towards the role of “care economics” in GDP, hence substantial activities of domestic workers get unnoticed and their contributions in GDP also get ignored.

GENERAL INTRODUCTION

In Black’s law dictionary; the word “Domestic worker” is defined as- domestic servant, a servant who resides in the same house with the master. The term does not extend to workmen or labourers employed out of doors.⁷

In India, the definition of domestic-work mainly uses the principle of the “*Place of Work*”. Thus domestic-work is understood generally in terms of work done inside the household for a private employer. These household tasks may comprise of cooking, housekeeping, cleaning, washing and extensions of these outside the home such as marketing. The definition does not include tasks done for private household as drivers, gardeners, gatekeepers, etc. and thus excludes most men working for private employers.⁸

Task force report of Ministry of Labour and Employment, Government of India defines “Domestic Worker” as a person who is employed for remuneration whether in cash or kind, in any household through any agency or directly, either on temporary or permanent, part time or full time basis to do a household work, but does not include any member of the family of an employer.⁹ The report has also classified different types of domestic works into three categories i.e. part-time, full-time and live-in workers.

It is very depressing to see that even Government of India took so many years just to recognise *household and domestic-workers* under the category of “*recognised workers*” in

⁷Garner, B. A. and Black, H. C. 1999. Black's law dictionary. St. Paul, Minn.: West Group.

⁸UNDP. 2012. Synthesis of Important Discussions on Livelihood and Microfinance Issue of Domestic Workers, p.g.4. [online] Available at: <http://www.in.undp.org/content/dam/india/docs/poverty/synthesis-of-important-discussions-on-livelihood-and-mf-issues-r.pdf> [Accessed: 20 Feb 2014].

⁹Indian Development Gateway. 2011. Final report of task force on domestic workers- realising decent work, ministry of labour and and employment. [online] Available at: http://www.indg.in/social-sector/unorganised-labour/national_policy_on_domestic_work_2011.pdf [Accessed: 20 Feb 2014].

India. But this mere recognition could not help much; there is a vital requirement for a codified statute for the protection for domestic workers, in specific.

What Happens:-

In India, “*domestic work*” as not being so recognised field, rather understood and underestimated just as a social or personal activity/ favour, have often been neglected by policy makers at the time when they draft any provision, law or regulations, thus resulting in massive exploitation of domestic workers.

After so many years, even after it getting recognised partially as a separate class of work, domestic workers are still not being benefited or shielded with rights unlike their counterparts i.e. *other unrecognised workers*. They still do not come under the ambit of any statutes which can provide them just and fair equity in term of their rights, benefits, and duties.¹⁰

In India most of the domestic workers come from marginalised section of society, they are paid very less for their services (much lesser than the minimum amount that they should be entitled to get), these workers do not have any kind of organisation or unions of their own that can help them to unite and fight for their rights, most of the domestic workers who come from distant places as migrants, in search for a job, often face real difficulty while bargaining for their wages. As these domestic workers have lack of bargaining power, and there is no job security provided to them even by the *lex loci*¹¹ they are more prone to compromise on many things.¹²

In India domestic workers who live-in with their employers, are more vulnerable to get exploited. They often end up working from 8 hours to 18 hours a day and still they get scolded and sometimes beaten-up by their masters. These domestic workers have to remain at their toes all the time for any kind work at any given time. At times, if a domestic worker is a young girl, then that worker becomes more vulnerable to even get sexually exploited by the

¹⁰ Hrln.org. n.a. National Domestic Workers Welfare Trust vs Union of India. [online] Available at: <http://www.hrln.org/hrln/labour-rights/pils-a-cases/269-national-domestic-workers-welfare-trust-vs-union-of-india-.html#ixzz2tKR6Pf4M> [Accessed: 20 Feb 2014].

¹¹ Means:-**Law of the place or law of the land**, [find here](#) :- Garner, B. A. and Black, H. C. 1999. Black's law dictionary. St. Paul, Minn.: West Group.

¹²Wiego.org. n.d. Domestic Workers in India | WIEGO. [online] Available at: http://wiego.org/informal_economy_law/domestic-workers-india [Accessed: 20 Feb 2014].

employer. Live-in domestic workers often have to compromise with their freedom; they are sometimes forced to stay on one place so that they cannot socialise with others.¹³

On the other side, those workers who are full-time or part-time workers, they generally have greater freedom to express and do things. But still, their condition is nevertheless very different from live-in workers. They normally have to live in unhygienic conditions (most of them live in slums), and they often work as the “bread earner” for their family members.

How it happens:-

In India around 93% of working-force belongs to unorganised sector¹⁴ and excluding agricultural working-force i.e. *around 133 million workers* or 83% of that belongs to informal economy/unorganised sector.¹⁵ As per some research conducted in year of 2004-2005 by “national sample survey organisation” the approx. figure for domestic workers stands at 4.5 million¹⁷.

Indian domestic workers are also a part of informal sector that belongs to care-economy. Care- economy, being not so recognised, has no regulatory mechanism by which the protection of its working-force can be insured.

Very large sections of poor and under privileged workers from backward-areas, migrate toward the metropolitan and big cities in a search for good jobs [to earning just their bread and butter], but they often end up getting exploited and mistreated from the hands of employers or by the placement agents. They often get attracted towards these places in a hope of getting more opportunities and livelihood. But on contrast, they find themselves at nowhere; they face so much difficulty in sustaining themselves at these big places.

¹³Ndwm.org. n.d. Live-in & Part time Domestic Workers. [online] Available at: http://ndwm.org/?page_id=234 [Accessed: 20 Feb 2014].

¹⁴Planning Commission, Government of India. 2006. report on the working group on labour laws and other labour regulations. [online] Available at: http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_rplabr.pdf [Accessed: 21 Feb 2014].

¹⁵International Labour Organisation. 2002. Women and the Men in the informal economy. At p.g. 34 [online] Available at: <http://www.ilo.org/dyn/infoecon/docs/441/F596332090/women%20and%20men%20stat%20picture.pdf> [Accessed: 21 Feb 2014].

¹⁶The Economic Times. 2013. Informal workers, making up 90% of workforce, won't get a good deal till netas notice them. [online] Available at: http://articles.economictimes.indiatimes.com/2013-10-25/news/43395491_1_neelkanth-mishra-india-fall-informal-economy [Accessed: 21 Feb 2014].

¹⁷Wiego.org. n.d. Domestic Workers in India | WIEGO. [online] Available at: http://wiego.org/informal_economy_law/domestic-workers-india [Accessed: 20 Feb 2014].

There are many placement agencies in India who help these underprivileged workers to get job but many a times, these domestic workers get physically and mentally exploited by agents. At times, workers have to sign such kind of contract whereby the worker does not get his/her salary directly by employer, but first his/her salary is first deposited to his/her' agent's bank account, and later the agent gives the salary to worker. Most of the times, salary given by agents are very lesser than what had been promised.

“*Dignity of Labour*” as a concept has become a kind of illusion¹⁸. There are NGOs which are working to help domestic workers, but they face so many hurdles when they go and try to meet a live-in domestic worker. Many a times, employer refuse to entertain any request made in respect to domestic worker, and he generally ask representatives of NGOs to contact the placement agency for the same, as ultimately they are the ones with whom employer had signed a contract.¹⁹

Though there are many agencies which are working ethically to help domestic workers²⁰, most of the times, these agencies are not identifiable easily. There is a big chain of placement agencies in India, and *in-toto* they are unregulated by laws. Placement agencies are not legally recognised, and they do what they feel like just for them.²¹

Those workers, who migrate from distant areas of country, often face difficulty with the different-language used in at particular locality. They fail to get or understand proper instruction from the employers and therefore they get scolded and beaten-up for their mistakes. Some migrate workers are even less skilled and they have to compromise with their salary and other remunerations because of their inability to perform certain menial jobs.

Why happens:-

As it has been discussed before, there are no proper laws that can govern and regulate this separate class of working-force. Most domestic workers are self or employed by agencies,

¹⁸UNDP. 2012. Synthesis of Important Discussions on Livelihood and Microfinance Issue of Domestic Workers, p.g.68. [online] Available at: <http://www.in.undp.org/content/dam/india/docs/poverty/synthesis-of-important-discussions-on-livelihood-and-mf-issues-r.pdf> [Accessed: 20 Feb 2014].

¹⁹ Supra

²⁰The Times of India. 2014. Cabinet must quickly approve national policy on domestic workers: NGOs, activists - The Times of India. [online] Available at: <http://timesofindia.indiatimes.com/india/Cabinet-must-quickly-approve-national-policy-on-domestic-workers-NGOs-activists/articleshow/30686827.cms> [Accessed: 21 Feb 2014].

²¹UNDP. 2012. Synthesis of Important Discussions on Livelihood and Microfinance Issue of Domestic Workers, p.g.70. [online] Available at: <http://www.in.undp.org/content/dam/india/docs/poverty/synthesis-of-important-discussions-on-livelihood-and-mf-issues-r.pdf> [Accessed: 20 Feb 2014].

and there is no mechanism to regulate their work. There have been so many debates and discussions, but all in vain nothing proper could be done to regulate and provide “just and humane” environment to domestic workers in India.

Task-force reports and various recommendations have been submitted by labour-Ministry and “National Commission of Women” to the government. Also after the formation of UPA-led congress Government in India, “National advisory council” (NAC) was established so to assist government in policy making and, NAC also have drafted some suggestive regulation for enforcement. But sadly, no law could have been passed in Parliament. There were some bills which had been drafted specifically for domestic workers, but those bills could never be passed in Parliament. It is disheartening to see that the bills are still pending for consideration for the last 5-6 years.²²

As it is evident, in the absence of any regulations (in-specific), those who are a part of this class/sector are more prone to get exploited. Even the enforcement agencies i.e. *police department*, rather helping the victims, tries to victimise the diseased persons by treating them like a piece of trash. Employers, being usually from a higher class, have their influence over the enforcement agencies and they generally get away from their wrongs.

Situation of Law at Present

Statutes:-

Unorganised Workers Social Security Act 2008:-This act was enacted by Government of India to give social security and to deliver welfare schemes to unorganised sector. In section 2 (k) the term “self-employed workers” is defined as:-

*“any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government”*²³

²²Singh, S. 2013. No progress on law to protect domestic helps - The Times of India. [online] Available at: <http://timesofindia.indiatimes.com/city/delhi/No-progress-on-law-to-protect-domestic-helps/articleshow/24892532.cms?referral=PM> [Accessed: 21 Feb 2014].

²³Ministry of Labour & Employment. 2008. the gazette of India, Ministry of Law and Justice, Unorganised Workers' Social Security act, 2008. [online] Available at: <http://labour.gov.in/upload/uploadfiles/files/ActsandRules/SocitySecurity/TheUnorganisedWoekersSocialSecurityAct2008.pdf> [Accessed: 22 Feb 2014].

The act under *section- 5* says that the central government shall constitute a “**National Social Security Board**” and also as per *section- 6* of the act, the state governments will establish “state social security boards” in their respective states. The “National Social Security Board” for Unorganised Workers, established in August 2009, has limited advisory role, and does not have enough powers to monitor, implement, or impose social security measures. Apart from very few states, such as Chhattisgarh, West Bengal and Karnataka, a most of the states have not even set up their state level welfare boards. Though the Unorganized Workers Social Security Act was passed in 2008, there has been miserable development on the ground. The Act itself has been criticized for not defining a minimum social security level that is enforceable by law and for not providing institutional powers to ensure effective implementation.²⁴

One of the main problems with the act is that it does not confer as such any social security to unorganised workers; it does not also define any definite rights for workers. Social security schemes are also not defined in the act (Section-3). Only, the schedules talk about the schemes and same can be amended at any point by notification without them being discussed in Parliament.²⁵

Child Labour (Prohibition And Regulation) Act, 1986:- Does not talk about specifically on domestic workers but it does have categorised domestic-work into hazardous and dangerous work category under part A of schedule in statute, therefore it is by law prohibited in India to employ a child below 14 year as a “Domestic-Worker”.²⁶

According to section- 1 of the said act, a Child means – “*a person who has not completed his fourteenth year of age*”.

²⁴Balakrishnan, R. n.d. Review of Social Security for Unorganized Workers in India. [online] Available at: <http://thealternative.in/inclusivity/review-of-social-security-for-unorganized-workers-in-india/> [Accessed: 22 Feb 2014].

²⁵ Section- 3, *Unorganised Workers' Social Security act, 2008*. [online] Available at: <http://labour.gov.in/upload/uploadfiles/files/ActsandRules/SocietySecurity/TheUnorganisedWoekersSocialSecurityAct2008.pdf> [Accessed: 22 Feb 2014].

²⁶Ministry of Labour & Employment. 1986. THE CHILD LABOUR (PROHIBITION AND REGULATIONS, ACT 1986. [online] Available at: <http://labour.gov.in/upload/uploadfiles/files/ActsandRules/SectionoftheSociety/TheChildLabourProhibition%26RegulationAct1986.pdf> [Accessed: 22 Feb 2014].

And Section 3 specifically says:- “No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on”.²⁷

And under **Schedule I** part A, at 14th clause “**Employment of child as domestic workers or servants**”, is mentioned as one of the occupations in which, as per section 3 of the act, a child cannot be employed.

Official estimates of child labour in India set the figure at 13 million although non-governmental organisations believe it is about 60 million. The 2001 Census found about 185,000 children working as domestic labour and 70,000 working in restaurants and dhabas²⁸, but NGOs say that the number of children actually employed in these sectors is close to 20 million.²⁹

There is a huge out-cries by various organisations and NGOs which are demanding to include “Domestic Workers” under Minimum wages act- 1948, and to set lower limit of salaries for domestic workers, but till now, nothing could be done in this regard. Parliament failed to pass even a single amendment to the act which could set and fix the lower limit salary criterion for domestic workers.

Though certain states like Karnataka, Andhra Pradesh, Rajasthan, Bihar and Kerala have included domestic workers in their State’s Minimum Wages Act and their salary have been fix by the states through their respective “Minimum Wages Acts” but still there is no *pen-India legislation* that can set a common parameter to decide minimum wages for domestic workers in India.³⁰ Following these states, some other states are also planning to include “Domestic Workers” in their minimum wages act.³¹

²⁷ Supra

²⁸ **A Roadside Food Stall**

²⁹ Hindu.com. n.d. *Editorials : Enforcing the ban*. [online] Available at: <http://www.hindu.com/2006/10/20/stories/2006102002811000.htm> [Accessed: 10 Mar 2014].

³⁰ Ganesh, U. 2013. Domestic Work in India. [online] Available at: <http://urbanpoverty.intellecap.com/?p=751> [Accessed: 23 Feb 2014].

³¹ <http://www.hindustantimes.com>. 2013. Now, domestic workers to get benefits of minimum wages act - Hindustan Times. [online] Available at: <http://www.hindustantimes.com/india-news/mumbai/now-maharashtra-domestic-workers-to-get-benefits-of-minimum-wages-act/article1-1114437.aspx> [Accessed: 23 Feb 2014].

Justice J. S. Verma Committee's Recommendation:-

After the horrific Delhi Gang rape case in year 2012 [Nirbhaya]³², People had to take their protest on streets to compel government to pass a strong criminal law that would prescribe a very severe punishment for the sexual offenders. Thereafter, Justice J. S. Verma Committee was constituted by Government of India to look into the matter and to give recommendation for a new law for the protection of women in India from sexual offences. Justice Verma committee invited recommendations from various organisations, institutions, eminent persons including every other person who is willing to give a healthy and productive suggestion to the committee in India.

Later, Justice Verma committee also had recommended to including “domestic workers” as one of the categories under employment in the **Criminal law amendment act, 2013** and the same was also accepted with some changes in the said Act by parliament.

Bills:-

In India, There had been so many attempts made to ask the government to recognise domestic workers as a recognised class. But nothing very impressive could have had appended. Though some statutes have included and recognised domestic workers as one of the recognised employments in unorganised sector.

The bills which are pending in the parliament for consideration could really ameliorate the condition of domestic workers, if passed by the legislatures.

“National commission of women” (NCW) had drafted a Bill for domestic workers in 2010 i.e. **Domestic workers Welfare and Social Security Act 2010**³³ which is still pending for consideration. Inter alia, the main provisions that the bill includes are:-

- 1- Recognised that placement agencies and specially the agents sometimes exploit domestic workers mentally and sometimes even sexually.
- 2- Provision for establishment of Domestic workers security fund under section 19 of the act.

³²Indiatoday.intoday.in. 2010. Judge said Dec 16 Delhi gangrape was 'premeditated, 18 injuries sufficient to cause death' : Delhi, News - India Today. [online] Available at: <http://indiatoday.intoday.in/story/delhi-gangrape-premeditated-december-16-judge-yogesh-khanna/1/309216.html> [Accessed: 23 Feb 2014].

³³<http://www.ncw.org>. 2010. Domestic workers Welfare and Social Security act, 2010. [online] Available at: http://ncw.nic.in/PDFFiles/domestic_worker_welfare_and_social_security_act_2010.pdf [Accessed: 23 Feb 2014].

- 3- Included all the placement agencies into the definition of “service providers” whether registered or not under the act.
- 4- Responsibility of the central government to establish central advisory committee. As per the bill, it would be the duty of the committee to look-after whether all the provisions in the act are being followed properly or not.
- 5- Provision for the establishment of National and State boards for domestic workers which would further formulate schemes for domestic workers. It is made compulsory under the bill that every Domestic worker has to register themselves under the board.
- 6- Responsibility of the state governments to establish district boards in their state.
- 7- Provision for maximum number of hours of daily work, overtime work and wages allowance.
- 8- State governments are given power to decide minimum wages for their respective domestic workers’ work-force.

Task-Force Reports:-

Task force of Ministry of labour and employment, government of India has submitted many reports on Domestic workers, and many of its recommendations were also accepted by government. But thus far, no impressive legislation could be made by the parliament for Domestic Workers. In the final report of the task force on Domestic workers "*Realising Decent Work*"³⁴ various recommendations were made for the empowerment of Domestic Workers but the enforcement of those recommendations seems very improbable as Congress party (the ruling government) is very soon going to face elections, and its chances of coming back to power are very bleak.³⁵³⁶

But it is also true that the recommendations made by task force are very important, and if implemented, such changes followed by enactment of laws, would help to ameliorate the condition of domestic workers to a great extent. The main recommendations of task force are:-

³⁴ India Development Gateway. 2011. *Final Report of the Task Force On Domestic Workers Realising Decent Work*. [online] Available at: http://www.indg.in/social-sector/unorganised-labour/national_policy_on_domestic_work_2011.pdf [Accessed: 10 Mar 2014].

³⁵ Firstpost. 2014. *Opinion polls predict BJP as biggest party in 2014 election*. [online] Available at: <http://www.firstpost.com/india/opinion-polls-predict-bjp-as-biggest-party-in-2014-election-1356385.html> [Accessed: 10 Mar 2014].

³⁶ In.reuters.com. 2014. *BJP to be biggest party in 2014 election - opinion polls* | Reuters. [online] Available at: <http://in.reuters.com/article/2014/01/23/election2014-bjp-congress-modi-aap-idINDEEA0M0EN20140123> [Accessed: 10 Mar 2014].

- 1- The report recommends to use rights based approach for domestic workers whereby protection of their basic fundamental rights related to minimum wages, rest period, safe and healthy workplace, hours of work, protection from abuse, harassment and violation etc.
- 2- Task force recommended a comprehensive policy for domestic workers in which a law and rules should be framed in such a way that workers can work with dignity, opportunity to engage in meaningful work, and a working environment where they are able to balance their work and family life.
- 3- Report also talked about ILO convention of 2011 Concerning Decent Work for Domestic Workers (c 189) which India had supported. But report lacked to recommend to the government that it should also ratify and become signatory of the same convention so that basic international fundamental rights recognised by the ILO convention can further be implemented in India by bring in suitable legislation. Such ratification will also give strengthen workers believe in their rights.
- 4- Task force further recommended that there should be an implementation committee established by the Ministry of Labour and Employment which would include representatives of government, workers' organisation, and organisations representing employers. In addition to this, each state should have tripartite institutional mechanisms that can look after the implementation of policies for domestic workers in their respective states.
- 5- Right to organise: - Task force report recommends that all the workers should have right to organise, form union and join organisations. Such rights will help domestic workers to fight for their rights collectively.
- 6- Right to skill development: - According to the report, Domestic work requires certain and some special kind of skills that every domestic worker is required to have. Any lack in skills on the side of domestic workers may result in less monetary benefits and also sometimes even in termination of their employment. Therefore State governments should make such policies and programme that can encourage workers to improve their skills which also includes their literacy training.
- 7- Regulation of Placement agencies: - As discussed before, this report also talk about the regulation of placement agencies that sometimes encourage the trafficking of domestic workers. Through proper regulations of these agencies by laws, they can be regulated and any violation of domestic worker's rights would then not become possible for them.

- 8- Grievance Redressal: - Every domestic worker or his/her representative for that matter, should have easy access to courts, tribunals or any other dispute resolution forum. The ministry of labour should come up with such complaint resolution mechanism by which domestic workers can have ability to address their grievances during and after their employment. Government should implement a kind of single window grievance Redressal mechanism through which the complaints of workers related to social protection, social security, harassment and violation and all other such problems can be address without getting into all complications of rules and procedures.
- 9- Protection of Domestic workers who seek to work abroad: - Government shall ensure the safety and security of all domestic workers who go to overseas on a long term assignment. Domestic workers should be made aware of their rights and privileges in the foreign county. Also, they should be briefed about their duties and obligation in their simple words so that there would remain no confusion. Ministry of labour with collaboration of ministry of overseas would make policies and regulation whereby it will become necessary for employer and employee to inter onto proper contract, before going for any overseas assignment.

National Advisory Council³⁷ (NAC) Report:-

National Advisory Council, an important hand of Congress government, was constituted in year 2004. NAC was constituted so that it can help existing government in policy making. Several bills drafted by NAC were later passed by parliament. NAC also had issued some recommendations for domestic workers "*Recommendation with regard to Essential Elements of a National Policy for Domestic Workers*".³⁸ NAC had recommended many important things such as: - "right to earn a livelihood" and "rights at work" should also be a part of domestic work. There should be equity in wages with other workers who are recognised by law. It is also mentioned in the recommendation that if in some larger labour rights framework, due to the nature of work, there is no possibility to include domestic workers,

³⁷ **The task of the National Advisory Council (NAC) is to provide inputs in the formulation of policy by the Government and to provide support to the Government in its legislative business. The NAC comprises distinguished professionals drawn from diverse fields of development activity who serve in their individual capacities.**

Nac.nic.in. *National Advisory Council, India*. [online] Available at: <http://nac.nic.in/> [Accessed: 10 Mar 2014].

³⁸ http://nac.nic.in/pdf/np_domesticworkers.pdf. *Recommendation with regard to Essential Elements of a National Policy for Domestic Workers*. [online] Available at: http://nac.nic.in/pdf/np_domesticworkers.pdf [Accessed: 10 Mar 2014].

then there shall be an obligation on government to design additional mechanism to ensure that domestic workers rights as workers can be exercised comprehensively.³⁹

In addition to this, Report reiterate the same recommendation which are made in Task force report, for instance:- Minimum Wages, right to remuneration without discrimination based on sex, right to regulate condition of work including daily normal hours of work with daily and weekly suitable rest (which shall be at least 24 consecutive hours per seven days), treatment with dignity and respect, protection against forced labour and trafficking, recognition and registration as workers with the state labour department, right to organise union and organisation etc

It is important to note that even after these recommendations by various organisations, ministries, and NGOs, government could not come with a proper statute or lest with policies for this sector. There has been a lack of willingness on the side of ministers to heed to the hue and cry of oppressed domestic- workers.

ILO Convention C 189:-

At the 100th Conference of international labour organisation in July 2011, the ILO convention on decent work for domestic workers⁴⁰ was adopted. It terms domestic work as work carry out in or for a household or households and a domestic worker as a person engaged in domestic work within an employment relationship. According to this definition, a person who carry out domestic work only irregularly or at irregular intervals and not on an occupational basis is not a domestic worker. This definition thus excludes all those who perform domestic work as unpaid labour within households or families, as well as those who engage in informal part-time paid activity (such as part-time or casual babysitting) in addition to their other regular activities.⁴¹

Even so, the convention recognises that a domestic worker may be employed on a full-time or part-time basis; may be employed by a single household or by multiple employers; may be

³⁹ Supra

⁴⁰ International Labour Organization. 2011. *C189 - Domestic Workers Convention, 2011 (No. 189)*. [online] Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 [Accessed: 11 Mar 2014].

⁴¹ Ghosh, J. 2012. *Women and domestic work: Creating conditions for decent work*. [online] Available at: <http://www.in.undp.org/content/dam/india/docs/Women-and-domestic-work.pdf> [Accessed: 10 Mar 2014].

residing in the household of the employer (live-in worker) or may be living in his or her own residence (live-out); and may be working in a country of which she/he is not a national.⁴²

The main features that the ILO convention deals with are as follow - Basic Rights for domestic workers, Hours of work, Remuneration, Information on terms and condition of employment, Occupational safety and health, social security, Standard concerning live-in workers, standards concerning child domestic workers, Standard concerning migrant domestic workers, Private employment agencies, complaints, enforcement and dispute settlement, inter alia.⁴³

Sadly, India has just supported this convention but it has not yet ratified it till now, which means India is not bound to act in accordance to the provisions inscribed in the convention. There is a huge out-cry and a demand from social workers and policy makers concerning domestic workers that India should also ratify this convention and should become signatory of it.⁴⁴ If India becomes the signatory of C 189, it will bound the state to make special provisions for domestic workers.

Cases:-

There are many cases which explains the terrible violation of basic rights of domestic workers⁴⁶but still, it's really sad that no-one is really concerned for the rights of domestic workers. Most often, employers take the advantage of their position and they easily get away from their wrongs. One of the best examples of this is the case of Indian diplomat Devyani Khobragade in US who was arrested and strip-searched when her Indian maid reported against her for paying her less than what had been promised under the contract. It was also alleged by Sangeeta Richards that she very often used to get forced to work for extra number of hours.

As Sangeeta Richards visa was attached with Diplomat's visa for work, she even did not have any option to leave the job and start her work somewhere else, which helped Devyani Khobragade to further take the undue- advantage of her vulnerability and exploit her services.

⁴² Supra

⁴³ Supra

⁴⁴ The Globe and Mail. 2013. *India-U.S. diplomat row puts spotlight on globe's domestic workers*. [online] Available at: <http://www.theglobeandmail.com/news/world/india-us-diplomat-row-puts-spotlight-on-globes-domestic-workers/article16069305/> [Accessed: 10 Mar 2014].

⁴⁵ Ghosh, R. 2013. *domestic workers welfare and social security act 2010 | The Little Things That Matter...* [online] Available at: <http://rituparnaghosh.wordpress.com/tag/domestic-workers-welfare-and-social-security-act-2010/> [Accessed: 10 Mar 2014].

⁴⁶ Supra

Sangeeta Richards's condition became more vulnerable when Further in September 2013. She apparently went missing on June 21, 2013. Thereafter, her diplomatic passport had been revoked. The domestic worker went to U.S. on an A-3 visa. The A-3 visa is basically a non-immigrant visa which permit, employees, attendants and the immediate family of the principal visa holder to enter the US. Moreover, there is no restriction upon the holder of an A-3 visa to travel within the US, though, one cannot work in the US if they are removed from their primary position or if they voluntarily leave their job with their principal employer.⁴⁷

Ms. Khobragade secured an injunction from the Delhi High Court against her, restraining her from setting off legal proceedings in U.S. In November, she secured a non-bailable warrant against Sangeeta Richard from a metropolitan magistrate's court.”⁴⁸

The arrest and strip-search of Devyani Khobragade became an international issue and a matter of pride and honour for Indians but none of us thought about Sangeeta Richards. If we look closely, it was just a matter of two Indians where one Indian was involved in violating the basic rights of a Domestic Worker. The case was just about rights, dignity, and just treatment to a domestic worker.

As U.S. has a better provisions for domestic workers, their salary and other remunerations are far better than India. And this is one of the reasons that many prefer Indian maids so that they can pay them lesser amount. The Indian-born maid was reported to have been paid \$3.31 an hour by the diplomat – below New York State's minimum wage of \$7.25. Taking into account the extra hours worked by the maid, the hourly salary was likely even less.⁴⁹

Various statutes and possibility to cover domestic workers:-

This section tries to make an argument that in certain statutes, if the definition of worker is wide enough, it can also include all the domestic workers in its realm. Most of the *pro workers statutes* talk about an existence of an "establishment" whereby recognised workers get involve into certain work activity.

⁴⁷ De, A. 2013. *Who is Sangeeta Richard? - The Times of India*. [online] Available at: <http://timesofindia.indiatimes.com/india/Who-is-Sangeeta-Richard/articleshow/27688937.cms> [Accessed: 11 Mar 2014].

⁴⁸ The Hindu. 2013. *Law for protection of all domestic workers demanded*. [online] Available at: <http://www.thehindu.com/news/cities/Delhi/law-for-protection-of-all-domestic-workers-demanded/article5496702.ece> [Accessed: 10 Mar 2014].

⁴⁹ The Globe and Mail. 2013. *India-U.S. diplomat row puts spotlight on globe's domestic workers*. [online] Available at: <http://www.theglobeandmail.com/news/world/india-us-diplomat-row-puts-spotlight-on-globes-domestic-workers/article16069305/> [Accessed: 10 Mar 2014].

Maternity Benefit Act, 1988, The Payment of Gratuity (Amendment) Act, 2009, Employees' State Insurance (Amendment) Act, 2010 all talk about some sort of recognised establishment.

As there is no established law as yet, if government passes some regulations by which it makes compulsory for all the placement agencies of domestic workers to get registered under some statute, then in all probability, there are chances that those placement agencies can also be considered as an "*establishment*" and all those domestic workers who are registered with or by such agencies will have a chance to avail all the benefits which are available to other workers.

There is also a pending bill *Regulation of Employment Agencies Act 2007*⁵⁰ drafted by National commission of women which is still pending for a consideration. If this bill is passed, it will put an obligation on placement agencies to work under certain provisions. It will also make compulsory for all the agencies under the ambit of statute to get themselves registered.

Conclusion:-

Some states such as, Kerala have passed a separate statute for domestic workers and in addition to this, there are those states which have recognised domestic workers in their minimum wages acts. But there is a dire need for an effective central statute that can fix the regulation of domestic work in all parts of India.

Domestic work comes under unrecognised sector but it contributes in certain percentage to the care economy. In India, 55% of domestic workers [mostly females] who are doing a job as a domestic worker, are doing such work because there is no one else in their home who has any earning job. Nearly 96% of workers are from unrecognised sector, and out of those almost 2/3 of them are self-employed. As the emergence of "new middle" class, the demand of domestic workers is gradually increasing.

Now, it has become important for government to regulate this sector by passing suitable legislations. One of the very initial initiative can be the ratification of ILO convention⁵¹ that

⁵⁰ National commission of women. *Need For Legislation Regulating Placement/ Employment Agencies*. [online] Available at: http://ncw.nic.in/PDFFiles/NEED_FOR_LEGISLATION_REGULATING_PLACEMENT.pdf [Accessed: 11 Mar 2014]

⁵¹ International Labour Organization. 2011. *C189 - Domestic Workers Convention, 2011 (No. 189)*. [online] Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 [Accessed: 11 Mar 2014].

can provide certain guaranteed rights to domestic workers such as basic fundamental rights, freedom of association, right to form trade union, right to have collective bargaining, protection against all form of abuse and violence. This convention also puts a burden on employer and placement agencies to inform the worker of "Terms & Conditions" of the contract in an understandable language that the worker can understand.

In addition to this, government should also pass those bills which are still pending in parliament for the last 4-5 years. Furthermore, government should, on certain intervals, issue guidelines to ensure implementation of rules and regulations so that working organisations in India can work more effectively for domestic workers.