

THE ROAD AHEAD FOR DOMESTIC WORKERS IN INDIA: LEGAL AND POLICY CHALLENGES

Vol. I | Issue 9 | September 2015

Domestic workers form a significant part of India's informal workforce. However, in the absence of a concrete legal mechanism of grievance redressal, they are becoming increasingly vulnerable to maltreatment. Although, a National Policy on Domestic Workers is currently awaiting the approval of the cabinet, domestic workers have largely been excluded from the ambit of labour legislations in India. In this context, this issue of the Law & Policy Brief identifies the existing challenges in upholding the rights of domestic workers.

Saudi Diplomat Accused of Raping Two Maids Uses Immunity to Leave India [The Guardian, Sep 17, 2015]; *Abused Domestic Help Says She Is Being Pressurized*, [The Hindu, May 24, 2014]; *Female Domestic Help Vulnerable to Abuse*, [Times of India, Nov. 24, 2013]; *Domestic Workers in India Face Horrific Abuses*, [The New Indian Express, Oct 28, 2013].

The titles of the above media reports from the last few years give us a peek into the violence and oppression suffered by domestic workers in India. The 'private' nature of domestic labour and the informal nature of employer-employee relationship make domestic workers susceptible to inhumane working conditions where they are denied just wages, employment benefits, and are subjected to physical and mental violence.

Defining Domestic Work

There is no standard definition of domestic work in India and consequently, there is no accepted statistical standard to estimate domestic service. This is reflected in the fact that while the National Sample Survey Organization (NSSO) estimates of 2004-2005 reveal that the numbers of workers employed in private households, largely domestic workers, are 4.75 million, the unofficial estimates on domestic work in India vary from 2.5 million up to 100 million. This variation in the the data

could be attributed to the differences in categorization of domestic work adopted by different government establishments. For instance, the category 'private household with employed persons' which is used to estimate the number of domestic workers in NSSO surveys has five sub-categories.¹ They are, housemaid/servant; cook; gardener; gate keeper/chowkidar/watchman; governess/babysitter; and others. On other hand the National Industrial Classification (NIC), which is an essential Statistical Standard for developing and maintaining comparable database according economic activities, includes domestic services such as "aaya, dhai, governess baby sitter etc." and "general household maintenance activities such as grooming the floor, dusting, cleaning of utensils etc." within the division of *Other Personal Service Activities* (Division 96). Again, National Classification of Occupations (NCO) captures domestic workers under different divisions. For instance, Occupational Division 5 (Service Workers and Shop Market Sales Workers) includes ayah, house-keepers etc., while Occupations of Domestic Servant, Domestic and Related Helpers, Cleaners, Launderers and Others are included within the Occupational Division 9 – Elementary Occupations. This create ambiguity in defining the scope and range of domestic work.

Law and Policy Research Group, at the Jindal Global Law School, brings the tools of legal analysis and policy analysis in conversation with each other. Its **Law & Policy Brief** presents inter-disciplinary analyses of Bills pending before the Parliament, recent court judgments, amendments to existing laws, recently enacted laws, and other topical legal issues that have important policy implications.

Editors

Dr. Ashish Bharadwaj
Saptarshi Mandal
jgls-lpb@jgu.edu.in
www.jgu.edu.in
www.jgls.edu.in



Jindal Global Law School
India's First Global Law School

JGLS offers B.A. LL.B., B.B.A. LL.B., LL.B. and LL.M. programmes. It promotes research on legal and policy issues to support an informed policymaking and legislative process. It also publishes the *Jindal Global Law Review*.

* JGLS ranked 1st among all private law schools in India by **Careers360 Magazine** (2014)

* JGLS ranked 5th among all law schools in India in **Legally India's Graduate Recruitment Rankings** (2014)

* JGLS ranked 2nd by an **India Today – Nielsen** survey for top emerging law colleges in India (2014)

Moreover, it needs to be recognized that there is a largescale feminization of domestic work with a considerable variation in the work performed by male and female domestic workers. While men work as gardeners, chauffeurs or security guards in private households, women are mostly employed for cooking, cleaning, or care giving services. Since the work performed by women as domestic workers is often perceived as an extension of their household work, welfare legislations in India do not reflect the concerns of women domestic workers. This becomes evident with the exclusion of domestic workers from the ambit of the Maternity Benefits Act, 1961

It is important to note here that the International Labour Organization (ILO) Domestic Workers Convention 2011 (No. 189), which came into force on 5 September 2013 defines domestic work as “work performed in or for a household or households” and a domestic worker as “any person engaged in domestic work within an employment relationship”. Bringing rights of domestic workers within the human rights framework, the Convention lays down the terms of decent work for domestic workers and protection of domestic workers from all forms of abuse, harassment and violence. The Convention lays down standards regulating hours of work, remuneration, occupational health and safety, and social security. It further lays down standards concerning child domestic workers, live-in domestic workers, migrant domestic workers, and private employment agencies. The Convention emphasizes on the need to ensure access of domestic workers to effective dispute settlement and complaint mechanisms. Although India supported the adoption of Convention 189, it has not yet ratified the Convention.

Labour Legislation in India on Domestic Work

It was not until 2008 when for the first time domestic workers received legislative recognition with the passing of the Unorganized Workers Social Security Act. The definition of a 'wage worker' under this legislation includes a domestic worker and means:

A person employed for remuneration in the unorganized 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 State Government, as the case may be.

The Act thus identified domestic work and domestic worker within the ambit of unorganized sector and also recognized

household as a place of work. The Act further recognized the employer-employee relationship in the context of paid domestic work within private households. It extended social security measures like life and disability cover; health and maternity benefits; old age protection and any other protection as may be determined by the Central Government for the domestic workers.

In 2010, the National Commission for Women (NCW) prepared the draft Domestic Workers Welfare and Social Security Bill, which highlighted the massive exploitation faced by domestic workers, particularly women and children due to the absence of any legal protection. However, this proposed legislation has not been passed by the Parliament. Subsequently, the Central Government had set-up a Task Force to evolve a policy framework for domestic workers in the context of regulatory mechanisms and providing social security measures. The Task Force, set up in the Ministry of Labour and Employment, adopted a two phased approach with Phase I focusing on welfare measures and Phase II focusing on regulatory mechanisms. The final report of the Task Force titled 'Realizing Decent Work' was submitted to the Ministry of Labour and Employment on September 12, 2011. In its report, the Task Force recommended that the Government must adopt a National Policy on Domestic Workers that will place domestic workers within a labour rights framework. The Task Force also recommended the adoption of a Code of Practice, covering a range of issues such as category of working conditions, contract of employment, probationary periods, remuneration (wages, payment in kind, regular payment of wages, overtime), implications of employer-provided accommodation, regulating living conditions, working time for live-in workers, night work, weekly rest periods, termination of employment and notice periods etc., which is to act as a practical tool to protect the rights of the domestic worker at the workplace. This Code of Practice is to work as a regulatory guideline till a separate legal instrument on domestic workers is drafted or domestic workers are brought under any existing regulatory labour legislation.

The inclusion of domestic work within the framework of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, is also a significant development in legislation concerning domestic work. It is important to note here that the original Bill on Sexual Harassment at the Workplace, introduced in the Lok Sabha in 2010, did not cover domestic workers. The reason given for this exclusion was that it would be difficult to enforce this kind of legislation in the private confines of the home. Due to the pressures created by domestic workers movements and women's rights organization, the legislation was later amended to include domestic workers. It defines domestic worker as a woman employed to do household work in any household for remuneration whether in cash or kind, either

directly or through any agency on temporary, permanent, part time or full time basis, but does not include any member of the family of the employer. According to this Act “sexual harassment” includes such unwelcome sexually determined behavior (whether directly or by implication) as—physical contact and advances; or a demand or request for sexual favours; sexually coloured remarks; or showing pornography; or any other unwelcome physical, verbal or non-verbal conduct of sexual nature. This legislation is a landmark development in the context of recognition of the rights of domestic workers, since it, for the first time, clearly identifies the domestic space as a work space.

The Proposed National Policy on Domestic Workers

Keeping with its recommendation, the Task Force drafted a National Policy on Domestic Workers, which is currently waiting to be approved by the Cabinet. If passed, the policy will mark an important landmark in the history of the struggle for recognition of the rights of a domestic worker. The National Policy recognizes the contributions made to the economy by the domestic workers through providing care services, and places an obligation on the Central Government and the State Governments to take appropriate measures for the protection of the labour rights of the domestic workers as guaranteed by the Constitution of India. The Policy identifies three types of domestic workers based on hours of work and nature of employment relationship:

- a) Part-time Worker: This includes workers who work for one or more employers for a specified number of hours per day or performs specific tasks for each of the multiple employers every day.
- b) Full-time Worker: This includes workers who work for a single employer every day for a specified number of hours (normal full day work) and who return back to his/her home every day after work.
- c) Live-in Worker: This includes workers who work full time for a single employer or stays on the premises of the employer or in a dwelling provided by the employer (which is close or next to the house of the employer) and does not return back to her/his home every day after work.

Domestic workers, the Policy lays down, like others workers have the right to minimum wage, normal hours of work, compensation for overtime, paid annual leave and sick leave, maternity benefits, safe and healthy place to stay and sufficient food (for live-in workers), safe working environment, protection against sexual harassment at the work place, work with dignity and respect, register as workers with the Labour Departments, access schemes and benefits

that are being extended to other categories of workers. It is also recommended that Rashtriya Swasthya Bima Yojna (RSBY), the National Health Insurance Scheme, to be extended to include the domestic workers in its ambit. The Policy recognizes the domestic workers' right to organize and to form their own associations or trade unions. Further, the Policy directs the Central Government to establish a regulatory mechanism for placement agencies to ensure just and fair working conditions for the domestic workers. Under the Policy, the Ministry of Labour and Employment is also required to set up a grievance redressal mechanism that will provide a single window access to domestic workers for all their needs whether related to welfare matters, social protection, social security, protection from abuse, harassment and violence, addressing grievances against the employer or placement agency, or for settlement of disputes through the courts or through alternative dispute resolution mechanisms.

Most significantly, the Policy talks about the need to protect the rights and interests of the domestic workers who travel outside the country to seek work and directs the Ministry of Labour and Employment to set up appropriate mechanisms to this end in collaboration with the Ministry of Overseas Indian Affairs. Another noteworthy provision of the National Policy is the recognition of domestic work as a skilled occupation. The Policy directs the State Governments to establish policies and programmes to encourage the continuing development of the competencies and qualifications of the domestic workers.

Challenges in Implementation

Although the National Policy on Domestic Workers is still waiting the approval of the cabinet, the Government has taken steps to implement few of the recommendations made by the Task Force, such as, the extension of the RSBY scheme to include domestic workers and directions given by Ministry of Labour and Employment to State Chief Secretaries to take necessary steps for the inclusion of domestic work as employment and for fixing minimum rates of wages for domestic workers.

However, the real test of these measures taken would be their effective implementation. For instance, a preliminary overview of the impact of RSBY's extension to domestic workers reveals that the scheme has limited accessibility for domestic workers. In many cases, domestic workers remain quite unaware of the existence of the scheme and the benefits that may be derived from it. Cases of corruption are being reported under the scheme perpetrated either by the empaneled hospitals or insurance companies taking advantage of the ignorance of the beneficiaries. A study conducted in Gujarat by N Devadasan (2013) on the working of the RSBY reveals that although there was a lot of awareness campaign on RSBY, it only gave out information on

'who' is eligible as beneficiaries and not on 'how' to use the RSBY cards.² As a result, lot of patients despite being eligible for health care made out-of-pocket (OOP) payments in the hospitals. Further, there is no standard treatment guidelines provided under RSBY, and coupled with lack of accurate information this puts the beneficiaries in a vulnerable position. Moreover, to be able to access the RSBY scheme, the domestic workers are required to furnish identity proof. It is, however, very difficult for domestic workers to furnish such proofs as in most cases employers are unwilling to provide employer certificate or the domestic workers do not possess required documents to furnish proof of residence (particularly in case of migrant workers).

The government has also not given any clear understanding on whether only those domestic workers who fall within the BPL category will be eligible for applying for RSBY cards, since RSBY is a scheme meant for BPL families only. Further, the RSBY guidelines clearly state that to be able to access the benefits of the scheme a domestic worker should have completed 18 years of age. Although there is an official ban on employing children as domestic workers as per the Child Labour (Prohibition and Regulation Act), 1986, yet it is estimated by UNICEF India (2015) that 74 percent of child domestic workers in India are between the ages of 12 and 16.³ With the age limit for accessing RSBY being fixed at 18, these children get excluded from any sort of health benefits thus rendering them further invisible in dissemination of social justice.

The extension of minimum wage to domestic workers also remains a rhetorical commitment as many States are yet to implement it. The Minimum Wages Act 1948 gives both the Central and State Governments jurisdiction in fixing, revising and enforcing the payment of minimum wages. Therefore, there is a wide variation in the minimum wages paid for the same employment in different States and Union Territories. Moreover, there has also been a lot of discussion and debate on whether the tasks performed by a domestic worker can be termed 'skilled' or 'unskilled'. The National Policy on Domestic Workers, if implemented, would change this existing perception of domestic work as it clearly lays down that domestic work is a skilled occupation. The Policy urges the State Governments to include domestic work as one of the occupations in the State level implementation of the National Skills Development Initiative (SDI). However, recognition of domestic work as 'skilled' labour has certain critical implications. Domestic workers as 'skilled' labour would be entitled to higher payments and the current understanding of minimum wage for domestic workers would have to be revised. This may paradoxically lead to less employment opportunities for domestic workers. Domestic workers are a source of cheap labour and their employment opportunities mainly emanate from the middle class household in India. With the cost of employing domestic help going up, there is a possibility that the demand for domestic help from these households would go down and domestic workers may be forced to accept less than the prescribed minimum wage.

Conclusion

Although there have been efforts to bring in domestic workers within the framework of labour legislations, there are three major shortcomings and challenges in this effort: first, to classify the type of work performed by a domestic worker; second, to identify an employer-employee relationship in a domestic household; and third, to recognize domestic environment as a 'workplace'. A serious concern also is the absence of detailed empirical evidence documenting the extent of exploitation faced by domestic workers. Media has played a significant role in bringing many such cases of domestic workers abuse to light. However, it is recommended that such cases are not treated as isolated incidents. There needs to be an effective legislative protection of the rights of domestic workers and recognition of an employment relationship in domestic work. While the Government is still working towards approving the National Policy on Domestic Workers, the challenges in implementing some of the recommendations are already apparent. Therefore, it must be recognized that even with the National Policy in place, it is a difficult road ahead in ensuring protection and promotion of the rights of domestic workers. ■

¹Neetha N., Contours of Domestic Service: Characteristics, Work Relations and Regulations, Indian Journal of Labour Economics, Jan-Mar 2009, 489-492.

²Devadasan Narayanan et. al., Promoting Universal Financial Protection: Evidence From the Rashtriya Swasthya Bima Yojna (RSBY) in Gujarat, India, Health Research Policy and Systems, August 2013, 5.

³Jyoti Rao, Assessing Child Domestic Labour in India, UNICEF India (Last visited Sep 28, 2015), http://www.unicef.org/india/child_protection_2053.htm

About the Author

Upasana Mahanta [B.A. (Hons.), M.A. (Delhi), M.Phil. (JNU), Doctoral Fellow (UBC, Canada), Ph.D. (JNU)] is Assistant Professor & Assistant Director, Centre for Women, Law & Social Change, Jindal Global Law School. Upasana's teaching and research interests lie in the areas of role of women in emergent political institutions, gendered understanding of conflict, and examining development through a gendered lens.

Indranath Gupta [LL.B. (Calcutta), LL.M. (East Anglia, UK), LL.M. (Aberdeen, UK), Ph.D. (Brunel, London)] is Associate Professor & Assistant Director, Centre for Intellectual Property and Technology Law, Jindal Global Law School. Indranath's teaching and research interests lie in the areas of information technology law and intellectual property law.

Editors and Conveners of the Law and Policy Research Group

Ashish Bharadwaj, Assistant Professor, Jindal Global Law School
Ph.D. (Max Planck Institute, Munich), LL.M. (Rotterdam, Hamburg, Manchester), M.Sc. (Chennai), B.A. Hons. (Delhi)

Saptarshi Mandal, Assistant Professor, Jindal Global Law School
LL.M. (Central European University, Budapest), B.A. LL.B. Hons. (National University of Juridical Sciences, Kolkata)