

Upasana Mahanta · Indranath Gupta  
*Editors*

# Recognition of the Rights of Domestic Workers in India

Challenges and the Way Forward

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*We dedicate this book to all hard-working domestic workers who have inspired us to work on this volume. It is a small contribution towards their cause.*

# Foreword

Domestic workers cover a significant part of the total workforce not only in India but also across the globe. In the context of India, however, one witnesses a continued gap when it comes to including domestic workers in the ambit of labour laws and policy interventions. A number of issues relating to the abuse and exploitation of domestic workers have been reported that demand immediate attention. Legal and institutional frameworks that protect the rights of domestic worker risk losing their meaning and relevance, if there are no effective redressal mechanisms that address the violations of their rights. This edited volume brings together scholarly contributions discussing the complexities relating to domestic work and generates meaningful discussions on public policy, social justice, recognition of the rights of domestic workers under human rights, feminization of domestic workforce, and ensuring decent work to the domestic workers. I would like to congratulate the editors of the book, Prof. Upasana Mahanta and Prof. Indranath Gupta, for their efforts and hard work, which have led to the successful completion of this interdisciplinary volume. They have been able to bring together outstanding experts from diverse disciplinary backgrounds as contributors that have enriched the scope and value of the book. My heartiest congratulations to all the contributors. I sincerely hope that this edited volume will fulfil its objective of contributing to a meaningful debate on public policy, legal reforms, and social justice. I believe that this is the first of many more such intellectually stimulating works that will be pursued in this theme.

Prof. Dr. C. Raj Kumar

## **Acknowledgements**

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# Chapter 1

## Introducing the Status of Domestic Workers in India



Upasana Mahanta and Indranath Gupta

What is ‘domestic work’? Who is a ‘domestic worker’? The terms ‘domestic’ and ‘work’ taken together often carry myriad ambiguities. The place of work is a domestic household, but the person working in that household is a worker. This essentially means transition of the rights of a worker as commonly understood in a labour legislation framework to a domestic set-up.

We are hesitant in bringing about the responsibilities that are often assigned to a regular employer in an industrial set-up to a ‘domestic employer’. For a regular employer, the general expectations towards their worker would broadly include: working conditions, payment of minimum wages, nature of work to be performed, hours of work, duration of employment, paid leave, and other terms of employment. These expectations are not merely rhetorical but are well founded in the labour legislation framework in India. However, labour legislations in India are mostly related to the workforce in the formal sector, thus excluding the majority of the workforce working in the informal sector from its ambit. Consequently, the informal and unorganized nature of their work invisibilizes the rights of domestic workers within the realm of labour law. Further, the process of formalizing the relationship between a domestic employer and a worker is complex as, even in the presence of a formal contractual relationship, the execution of such a contract may be extremely challenging.

Domestic workers are generally expected to perform a range of tasks. They may cook, clean, do the laundry and the dishes, tend to the children of the household, provide care to the elderly, buy groceries for the house, maintain the garden or work as chauffeurs. There is no uniform job description for domestic work. Domestic work also represents a significant entry point for women into the workforce. Women are mostly employed for cooking, cleaning or care-giving services that are often perceived as an extension of women’s conventional household responsibilities. In addition, caste location plays an extremely significant role in India in creating hierarchies within domestic work and dictates who would be engaged in what type of

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work. All these have critical implications in terms of defining domestic work, estimating and identifying domestic workers, and ascertaining rights and benefits. There is little or no comprehensive information that would give visibility to this informal workforce. Domestic workers often have to rely on the generosity of the employer in order to get certain benefits and are not given benefits as a matter of right. Lack of regulatory mechanisms and insufficient legal protection make domestic workers vulnerable to poor working conditions, exploitation and abuse.

With the adoption of Convention C 189 on Domestic Workers by the International Labour Organization (ILO) on 16 June 2011 at its Geneva Conference, the plight of domestic workers worldwide has received significant recognition. The Convention seeks to ensure decent work for domestic workers and urges the signatory countries to adhere to certain labour standards in employing domestic workers. Although India supported the adoption of this Convention, it is yet to ratify it. Till date, India has not been able to come up with a comprehensive legislative framework to protect and promote the rights of domestic workers. It was as late as 2008 when for the first time the domestic workers came to get some sort of legislative recognition with the passing of the Unorganized Workers Social Security Act. The Act 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 to the domestic workers (Section 4). The Act, thus, recognized the employer–employee relationship in the context of paid domestic work within private households. Subsequent to this Act, 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 policy framework evolved by the Task Force (National Policy on Domestic Workers) is still awaiting its approval by the cabinet.

In this contextual framework, this volume attempts to bring together a set of contributions that examine the complexities associated with domestic work by highlighting not only the legal issues but through a focus on social, psycho-social, economic and cultural dimensions of domestic work. Our intention is to ignite a collective effort towards ensuring decent work for domestic workers and facilitate a public debate on their rights. This volume includes discussions on the issue of social justice emphasizing on invisibilization and undervaluation of domestic work, feminization of domestic work and recognizes the rights of domestic workers as human rights. The issues covered in this book, although not exhaustive, is an attempt on our part to bridge the gap between legal and social dimensions of domestic work and to address the discrimination faced by domestic workers in a holistic manner.

## **Domestic Work and the Domestic Worker**

According to the ILO Convention number 189 on Domestic Workers, ‘domestic work’ means, “... work performed in or for a household or households” [Article 1 (a)]. The Convention defines a domestic worker as “... any person engaged in domestic work within an employment relationship” [Article 1 (b)]. Therefore, such

worker may be engaged in full-time or part-time employment in either multiple or single households which may or may not be their residence. As per the International Standard Industrial Classification (ISIC), the activities of households as employers of domestic personnel include "... maids, cooks, waiters, valets, butlers, laundresses, gardeners, gatekeepers, stable-lads, chauffeurs, caretakers, governesses, babysitters, tutors, secretaries, etc." (Division 95, Revision 3.1). ILO estimates that there are around 52.6 million workers engaged in domestic labour across the world of which 83% are women<sup>1</sup> (ILO 2013a, 2). Between the mid-1990s and 2010, there has been an increase of more than 19 million domestic workers worldwide (ibid.). Although it is male domestic workers who mostly get employed as gardeners, chauffeurs or security guards in private households, women domestic workers outnumber men in almost all countries and regions of the world.

For the live-in domestic workers, it becomes further complicated as they are paid a flat rate weekly or monthly irrespective of the number of hours worked. In addition, the phenomenon of domestic work is also closely interlinked with that of large-scale migration in search of better employment opportunities. This includes intra-region, inter-region and also inter-country migration. There is also a gender dimension to migration flows, particularly in Asia and the Pacific region, with men emigrating to undertake mostly construction work and women for domestic work. The migrant domestic workers are in a further perilous position due to their lack of local knowledge and laws and are vulnerable to non-payment of wages, debt bondage and abusive living conditions. ILO estimates that 29.9% domestic workers worldwide are excluded from any form of national labour law protection (ILO 2013b).

The undervaluing of domestic work is thus deeply rooted in larger structural discriminations. In this case, both the worker and the work are not perceived in the framework of a formal employer–employee relationship. In a pilot survey that has been conducted in four countries—India, Thailand, Italy and Sweden—in order to map the employer’s attitude to domestic workers in general and in their practices and attitudes towards trafficked and forced domestic workers, it is revealed that most employers conceive of domestic work as being different from other types of work (Anderson and Davidson 2003, 33). Workers in private households were not looked upon as being entitled to rights: 48% of the survey respondents were opposed to the domestic workers’ entitlement to a contract with the employer; 70% of the survey respondents held that domestic workers should not have a right to organize themselves into trade unions; 52% of those surveyed were opposed to minimum wage for domestic workers; and 45% of the respondents were against fixing working hours for domestic workers (ibid.).

In the absence of a legal framework within which they can claim their rights, domestic workers are, therefore, one of the most vulnerable workforces often suffering abuse and exploitation. In addition, mapping the scale of such abuse itself is quite difficult due to the lack of reporting mechanisms.

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<sup>1</sup>These figures exclude child domestic workers below the age of 15. According to ILO estimates of 2008, there are around 7.4 million child domestic workers worldwide (ILO 2013).

## Class, Caste and Gender in Domestic Work

In order to understand the complexity of the issue of domestic work in India, one must engage with the question of caste, class and gender hierarchies. There are many instances where these hierarchies become the site for discrimination and exploitation of domestic workers. Domestic work helps to maintain an overall system of class subordination. Dickey argues that paid domestic work provides for “ideal domain for examining the production of class relations and identities” (2000, 32). Domestic work is an “arena in which class is reproduced and challenged on a daily and intimate basis” (ibid.).

One’s caste also plays an extremely significant role in India in determining their role as domestic workers. In a study conducted on the impact of caste and gender in the organization of paid domestic work in India by Raghuram (2001), it is revealed that one’s caste location as a Brahmin<sup>2</sup> would get one work as a cook, while a Balmiki<sup>3</sup> domestic worker would be given the work of waste removal (D’Souza 2010, 27). Talking about the intersection of gender with caste hierarchies, the study further reveals that within the Balmikis, the men are more likely to get jobs as municipal street cleaners whereas women have to find jobs in private households (ibid.).

The undervaluing of paid work performed within the private household also arises from the large-scale feminization of domestic work. In India, domestic work has emerged as a key sector for the employment of women. According to NSSO estimates of 2004–2005, 3.05 million of total domestic workers in India are women. India has also witnessed a significant rise in the number of migrant domestic workers who have migrated from rural and tribal areas to urban centres. Most of these migrant domestic workers are women (Mehrotra 2010, 1). However, the policy legislations in India do not reflect this gendered dimension of domestic work. For instance, the Maternity Benefits Act, 1961 is not extended to domestic workers despite the fact that it is mostly women who are engaged in paid domestic work.

Further, due to the temporary nature of their settlements, and non-recognition of the work they perform in private households, migrant domestic workers in India are also often excluded from surveys, labour laws and social security measures. India also receives domestic workers from neighbouring countries such as Nepal, Bangladesh and Sri Lanka (APWLD 2010, 34). Although migrant domestic workers in India from neighbouring countries fall within the ambit of the Foreigners Act, 1946, they remain excluded from any protective labour law measure. Domestic workers from India also migrate to countries in the Middle East and Asia in pursuit of better employment opportunities. It has been documented that migrant workers are often subjected to exploitative working conditions by their employers (Mehrotra 2010, 10). This is

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<sup>2</sup>As per the caste system prevalent in the Hindu society in India, there are four castes—the Brahmins (priestly caste), the Kshatriyas (warrior caste), the Vaishyas (traders) and the Shudras (menial task workers). Dalits (formerly known as the untouchables) fall outside these four castes and are considered below all, so much so that even their touch is considered polluting.

<sup>3</sup>Formerly known as untouchables, they are also referred to as Balmikis.

despite the fact that the Government of India has created a new Ministry of Overseas Indian Affairs in 2005 to take responsibility for Indian migrants overseas.

Therefore, it becomes extremely crucial to recognize the structural nature of discrimination faced by domestic workers, which is rooted in the current living realities of class, caste and gender. Yet, the statistical standards and definitions on domestic work do not present a disaggregated data on domestic workers reflecting such structural understandings. They only give us generic categories like cook, housekeeper and gardener without telling us the class, caste or gender dimensions of such categories. However, a policy targeted for the welfare of the domestic workers and betterment of their working conditions must have an understanding of the structural grounds on which discriminatory treatment is meted out to domestic workers.

## **National Policy on Domestic Workers in India**

The National Policy on Domestic Workers, if passed in its current form, could be a landmark in the history of the struggle for recognition of the rights of domestic workers in India. The National Policy recognizes the contributions made to the economy by the domestic workers<sup>4</sup> 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. Domestic workers, the policy lays down, like other 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 workplace, work with dignity and respect, register as workers with the Labour Departments, and access schemes and benefits that are being extended to other categories of workers (Section 1.4). It also recommends that schemes, such as the Rashtriya Swasthya Bima Yojana (RSBY) and the National Health Insurance Scheme, be modified to include the domestic workers in its ambit (Section 4.4).

The policy recognizes the domestic workers' right to organize and to form their own associations or trade unions (Section 4.3). 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. Till the time such a mechanism is formulated, placement agencies are to be placed under Shops and Commercial Establishment Act, 1953 (Section 4.4). Under the policy, the Ministry of Labour and Employment is also required to set up a grievance redressal mechanism that

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<sup>4</sup>The definition of domestic work as given by the National Policy has been discussed later.

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 (Section 4.8).

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 (Section 4.5). This kind of mechanism will ensure that prior to their departure, domestic workers travelling abroad for work are given all due information on helpline numbers or contact points such as embassies, or names and address of civil society organizations or workers' organizations in the country of work, which can provide assistance in case of any grievances faced by the domestic workers.

One of the most noteworthy provisions of the National Policy, which might have tremendous bearing on the conceptualization of domestic work if implemented, is the recognition of domestic work as a skilled occupation. Talking about the right of domestic workers for skill development, the policy lays down that domestic work is a skilled occupation and hence requires skills that may range from basic to highly professional skills (Section 4.6). 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.

It needs to be highlighted here that certain recommendations that have been made in the National Policy were also included in the first report of the Task Force submitted in March 2010. Few of these recommendations have already been implemented by the central government, and few are under consideration. Three most significant measures taken by the government to implement these recommendations are:

1. Extension of the RSBY scheme to include domestic workers (23 June 2011).
2. Direction given by the 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 (1 July 2010).
3. Direction given by the Ministry of Labour and Employment to State Principal Secretaries to take necessary steps for registration of placement agencies providing domestic workers under the Shops and Commercial Establishment Act, 1953 (13 October 2010).

### ***Extension of RSBY to Domestic Workers: Challenges in Accessing***

RSBY is a scheme launched by the Ministry of Labour and Employment on 1 April 2008, to provide health insurance coverage for Below Poverty Line (BPL) families. Beneficiaries under RSBY are entitled to hospitalization coverage up to INR 30,000.

Pre-existing conditions are covered from day one, and there is no age limit. Coverage extends to five members of the family, which includes the head of household, spouse and up to three dependents. A beneficiary of RSBY gets cashless benefit in any of the empanelled hospitals (both public and private). Beneficiaries need to pay INR 30 as registration fee, while central and state governments pay the premium to the insurer selected by the state government on the basis of a competitive bidding.

Following the recommendation of the Task Force, the Ministry of Labour and Employment extended the coverage of RSBY to include domestic workers, and this initiative received the approval of the Union Cabinet on 23 June 2011. The guidelines for extending RSBY to domestic workers define a 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 a temporary basis or permanent, part time or full time to do the household work but does not include - any member of the family of an employer” (Para 1). It is also clearly laid out that to be able to access the benefits of the scheme, a domestic worker should have completed 18 years of age. Under the guidelines, state governments are entrusted with the responsibility of identifying domestic workers for which any two of the following criteria could be treated as evidence (Para 2):

- (a) Certificate by registered Resident Welfare Association (RWA) to the effect that a person is working as a domestic worker in the area;
- (b) Employer certificate;
- (c) Certificate from a registered trade union that the concerned person is working as a domestic worker;
- (d) Police verification certificate which certifies that the person is working as a domestic worker.

RSBY is an ambitious scheme that has received a lot of international attention and has been appreciated in global platforms like the ILO and the G-20 Labour Ministers Conference in Washington (PTI 2011). However, a preliminary overview of the impact of RSBY’s extension to domestic workers reveals that the scheme has limited accessibility for domestic workers owing to a variety of reasons. The most significant obstacle in the realization of the scheme has been the lack of information dissemination. In many cases, domestic workers remain quite unaware of the existence of the scheme and the benefits that may be derived from it (Sinha 2012). There have also been a number of cases reported of corruption under the scheme perpetrated either by the empanelled hospitals or by the insurance companies taking advantage of the ignorance of the beneficiaries (Khan 2010).

A study conducted in Gujarat on the workings of the RSBY reveals that most beneficiaries were not aware which hospitals were empanelled under the scheme and the types of services provided (Seshadri et al. 2011, 32). This reflected that the practice of providing a list of empanelled hospitals to all beneficiaries at the time of enrolment was not followed in practice. Also, often when the beneficiaries visited the hospitals, they were refused treatment under the scheme (ibid, 34). There are no standard treatment guidelines provided under the RSBY. This, coupled with a lack of accurate information, puts the beneficiaries in quite 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), or they are deterred because of the large-scale corruption that is prevalent. The following case may be cited as an illustration of this argument:

Rukhsana is a migrant from Bihar. Her husband is a former rickshaw puller and she is a domestic worker. The couple has four children. They all live in a cramped, rented one-room tenement for which they pay INR 1,500 every month. Rukhsana works in around four homes in the suburbs of the national capital as her husband is now unable to work since he underwent a major surgical procedure. She does not have a card that would allow her to avail herself of BPL entitlements. She has been told by an agent that in order to be the owner of a ration card she will have to pay INR 2,000. She does not have the money for that; even if she does, she is not confident that she will get the card after paying up. Her landlord is reluctant to certify that she is a tenant residing at his address for fear of getting into trouble. Rukhsana has no proof of residence and hence no proof of identity. She has no idea how to get such proof without paying a bribe. She is basically not on the list of the poor in India. She is unaware that the government has extended its health insurance scheme for unorganized workers to domestic workers like her (Rajalakshmi 2011).

There are also a number of procedural lacunae with the RSBY with wrong names being included in the database, wrong ascertaining of age and entire families being excluded from the purview of the scheme because they were not present at the time of data collection (Jain and Kataria 2012). This kind of challenge gets further accentuated in case of single women, widows or deserted women as often they do not have the required documents to furnish in order to avail various schemes of the government (see Kulkarni and Bhat 2010; Dhawan 2009). 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 (Rajalakshmi 2011).

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. While it is true there is an official ban on employing children as domestic workers as per the Child Labour (Prohibition and Regulation) Act, 1986, yet an estimated 185,595 children are being employed as domestic workers in private households (Census 2001). On 16 October 2006, two important notifications to the existing Child Labour (Prohibition and Regulation) Act, 1986 came into effect that banned the employment of children below the age of 14 as domestic workers and in the hospitality trade such as in roadside dhabas, restaurants, hotels, motels and spas. However, it is estimated that 74% of the child domestic workers in India are between the ages of 12 and 16 (The United Nations International Children's Emergency Fund (UNICEF)). 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.



## ***Non-uniformity in Implementation of Minimum Wage for Domestic Workers***

Upholding the recommendation of the Task Force on guaranteeing minimum wage to domestic workers, the Labour Ministry had sent out a letter, on 1 July 2013, to State Chief Secretaries requesting them to take necessary steps for the inclusion of domestic work as employment and for fixing minimum rates of wages for domestic workers. According to the Standing Labour Committee, Ministry of Labour and Employment, many of the states such as Andhra Pradesh, Assam, Bihar, Karnataka, Kerala, Rajasthan, and Dadra and Nagar Haveli have included domestic workers in the schedule of Minimum Wages Act [45th Session, 4 January 2013, Section 1(vi)]. However, many states, having rhetorically committed to extension of minimum wage to domestic workers, have not translated it to practice. The Government of Tamil Nadu, for instance, had announced in 2007 that the Minimum Wages Act, 1948 will be extended to domestic workers. Subsequently, a committee was set up to study the nature of domestic work and to ascertain a minimum wage for the domestic workers. The Committee submitted its report in February 2010 and recommended to fix minimum wage for domestic workers at INR 30 per hour. However, nothing has been done so far to implement the recommendation of the Committee.

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. It may be also observed that not all states which have extended minimum wages to domestic workers have defined the category of work within which domestic work falls. For instance, Bihar and Rajasthan have defined domestic work as unskilled labour. However, there is also no clear-cut definition available of what does the categories of skilled, unskilled or semi-skilled employment imply. There has been a lot of discussion and debate on whether the tasks performed by a domestic worker can be termed 'unskilled'. Questioning this classification of domestic work as 'unskilled' labour, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has also argued that the tasks and responsibilities assumed by domestic workers are often quite complex.

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 households in India (Wade 2009). With the cost of employing domestic labour going up, there is a possibility that the demand for such labour from these households

would go down and domestic workers may be forced to accept less than the prescribed minimum wage.

### **Compulsory Registration of Placement Agencies**

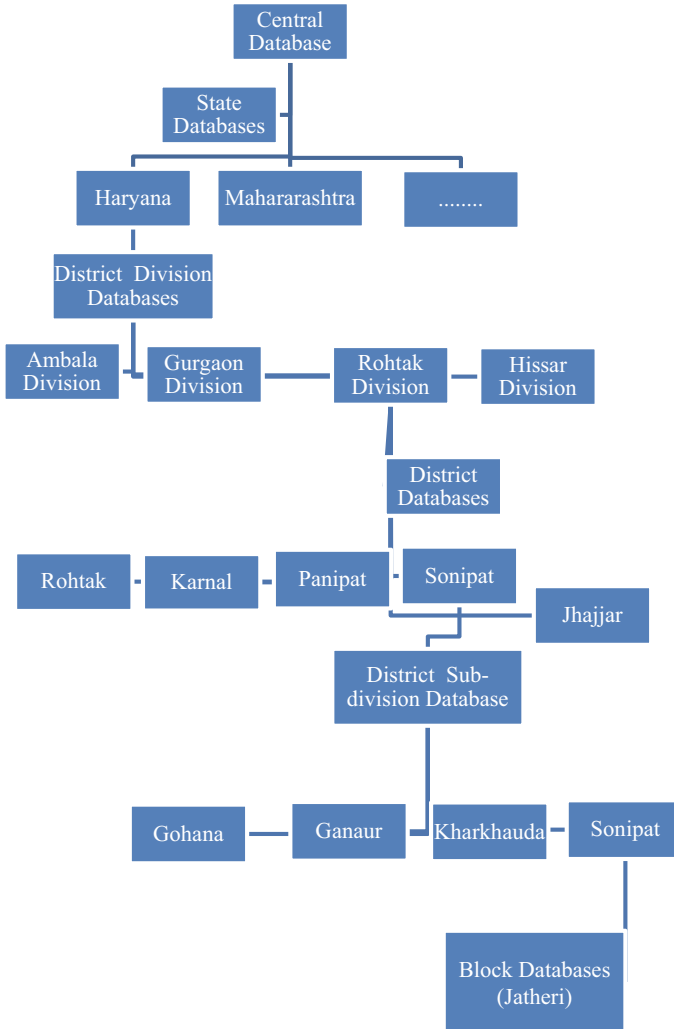
As per the recommendation of the Task Force on the regulation of placement agencies so as to protect fair working conditions of the domestic workers, the Ministry of Labour and Employment, on 13 October 2010, sent out letters to State Principal Secretaries requesting them to take necessary steps for registration of placement agencies providing domestic workers under the Shops and Commercial Establishment Act, 1953. However, in practice, no significant steps have been taken by the state governments so far for the registration and regulation of placement agencies. This requires urgent attention, since it has been reported that many placement agencies are engaged in nefarious activities such as the practice of trafficking in women and children for domestic work (Rajalakshmi 2011).

A survey conducted by the State Resource Centre, Adult and Continuing Education, in 2009 revealed that in the past 7–8 years, there were about 20,000 girls who were being trafficked across states in India, particularly from India's tribal-dominated areas (Droliya 2013, 13). It is alarming to note that at the heart of the trafficking business is a network of agents who hand over most of the trafficked girls to placement agencies, who in turn place them in various households and even send them to Saudi Arabia, UK and Libya as domestic labour (ibid.). Another serious concern that makes the regulation of placement agencies imperative is that in many cases, such agencies place domestic workers and particularly migrant domestic workers with employers they know to be abusive (Human Rights Watch 2005).

### **Proposing a Centralized Database on Domestic Work**

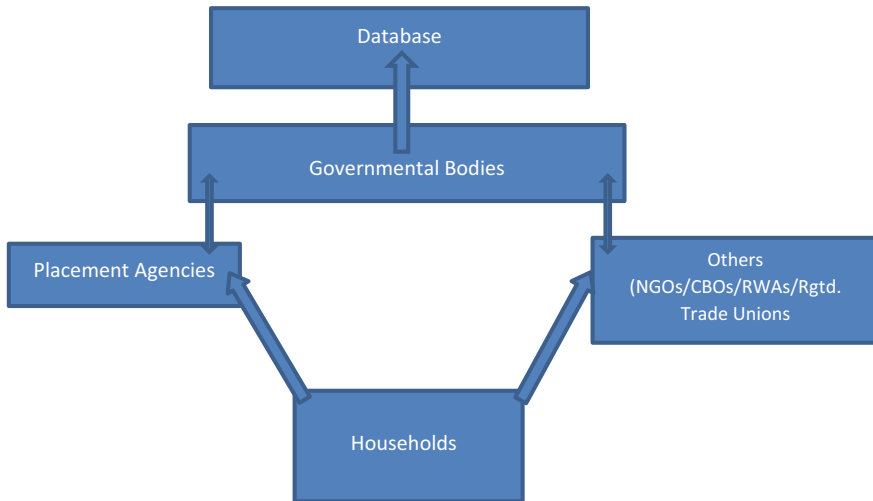
A comprehensive legislation on domestic workers can only be conceived when there is a well-researched database that gives certain definite indicators regarding the complexity of the concerns of the domestic workers. For instance, although we have a number of sporadic reports on the abuse and violence faced by domestic workers, there is no official empirical evidence giving us a nationwide picture of the patterns and extent of such abuse. We would, therefore, like to propose the creation of a centralized database on domestic workers that would help us in identifying certain concrete indicators on the concerns and challenges of the domestic work sector and assist in conceptualizing welfare mechanisms for domestic workers through legislative enactments.

The proposed centralized database has a number of levels at the state, district, sub-district and block level, and its implementation would depend on the administrative structure of a particular state. For the purpose of the following representation (Fig. 1) of the database, the example of the state of Haryana is being used.



**Fig. 1** The proposed structure of the central database

As depicted in Fig. 1, databases compiled at each level would finally be connected to the central database. For instance, taking the state of Haryana as an example, the compilation of database will begin at the block level (such as Jatheri), which will be linked to the district sub-division database of Sonipat. The Sonipat database, in turn, will be linked to the district division database of Rohtak, and this database will be linked to the database of the state of Haryana. Finally, the database of the state of Haryana will be linked to the central database.



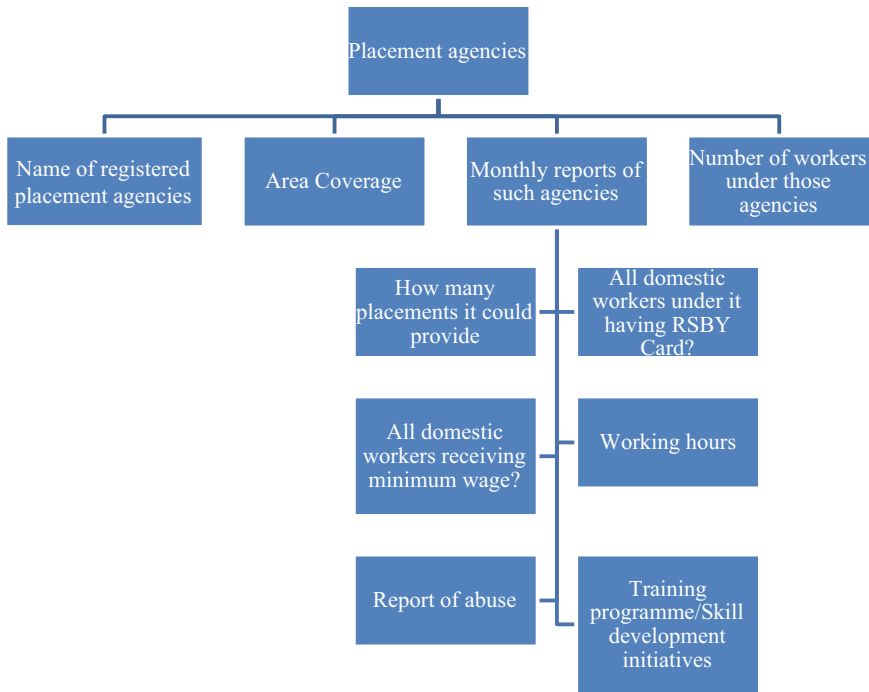
**Fig. 2** Typical database with all stakeholders

The database in each level, as represented in Fig. 2, is comprised of four stakeholders—governmental bodies, placement agencies, households and others. ‘Stakeholders’ in this context mean those who can affect and are affected by the conditions of work of domestic workers. The category of ‘others’ in the database will include those domestic workers who have not registered themselves with any placement agency. The data on these domestic workers can be collected through non-governmental organizations (NGOs) or civil society-based organizations (CBOs). It needs, however, to be emphasized here that the proposed database is a framework for gathering information on domestic workers and their key concerns, and it is important to take required cautionary measures in order to avoid duplication of the data generated.

The governmental bodies will be responsible for the overall supervision of the placement agencies and the data coming from the households and others. Such governmental bodies may include National Social Security Board and State Social Security Boards as proposed by the Unorganized Social Security Act, 2008 at the central and the state levels, respectively. Corresponding governmental bodies can be created at the district, sub-district or block level.

The database will include the details of all the registered placement agencies working in a particular area. The nature of information stored in the database regarding placement agencies and NGO/CBOs working on domestic workers is represented in Figs. 3 and 4.

For the operationalizing of the database, placement agencies and NGOs/CBOs/RWAs/registered trade unions working with domestic workers will be required to submit monthly reports that would contain information on the number of workers receiving minimum wage, working hours of the domestic workers, accessing of RSBY scheme by domestic workers and reports of abuse at



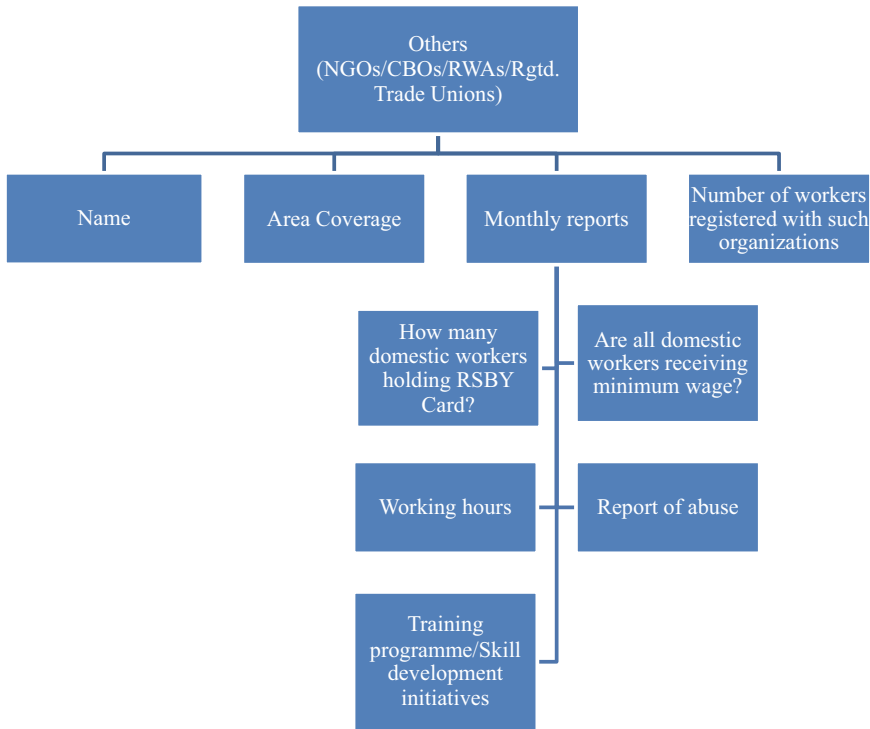
**Fig. 3** Database on placement agencies

the workplace. The reports will also include information on training programmes (if any) run for the domestic workers, the skill development initiatives undertaken, so on and so forth. The information gathered at the block levels will feed into the larger database at the sub-district/district levels that would in turn comprise the state-level databases and would ultimately be linked to the central database.

The primary unit of investigation in this database is the household (see Fig. 2). While the households provide data on domestic workers to the placement agencies and the NGOs/CBOs/RWAs/registered trade unions on the parameters identified (Figs. 3 and 4), it also needs to be acknowledged that there have been a number of cases reported of private households being victims of nefarious activities by the domestic workers employed. Offences committed against the employers may range from theft, robbery, kidnapping for ransom or even murder (D’Souza 2010, 37). It is also observed that senior citizens living alone are at great risk of becoming victims of such misdeeds by domestic workers.<sup>5</sup> The database may, therefore, also provide a set of information that would help protect the interest of the household as well.

The proposed database will provide certain definitive indicators that would help formulate a comprehensive legislation on domestic workers. The book recognizes that there could be a number of constraints in operationalizing the database due to

<sup>5</sup>See Hindustan Times (2010), Indian Express (2010), Times of India (2008).



**Fig. 4** Database on information coming from NGOs/CBOs/RWAs/Registered trade unions

the informal nature of domestic work, the large number of migrant domestic workers and the difficulty in locating domestic workers, as their workspace is confined within the private sphere of homes. However, the database model is being proposed as a template for mapping their conditions of work and to enable social security measures to reach out to maximum number of domestic workers in India.

### Structure of the Book

The chapters in this volume reflect the complexity of the issue of domestic work and are located within varied disciplinary fields. Apart from the introductory chapter, this volume includes nine chapters that address a range of issues concerning domestic work and the domestic workers. In the very first chapter on **Entitlements of Domestic Workers in India: Welfare or Right**, Uday Shankar argues for a rights-based approach for integrating domestic workers into the formal labour market. It is important not to see the entitlements of domestic workers as ‘needs’ but to locate their claims within a rights-based framework. The chapter argues that despite

being employed in the private sphere of the home, domestic workers cannot be excluded from labour legislations. Conceiving domestic workers as recipients of welfare schemes denies them any agency in asserting their right to decent work.

Taking this discussion forward, Tvisha Shroff, in her chapter on **Globalization, Democracy and the Capabilities Approach to Labour Law: Making the Case for Domestic Workers in India**, argues that drawing on the capabilities approach is critical for reconciling a normative basis for labour law on the one hand and a rapidly transforming global labour market on the other. The Draft National Policy on Domestic Workers while providing a template for substantial legal provisions addresses the issues of domestic workers as *conditions of employment* and *social insurance*. Shroff in this chapter makes a case that capabilities-based solutions must certainly combine both these critical factors.

Thus, it is important to recognize that domestic workers' issues cannot purely be addressed within a legal framework. Arguing that 'abstract categories of legal rights need to make adequate space for experience-based regimes of legal entitlements', Supriya Routh, in his chapter on **Situated Experience as Basis of Legitimate Law-Making: ILO Convention 189 and Domestic Workers in India**, claims that heterogeneity of domestic workers' experiences are not accounted for in the ILO Convention on domestic work. ILO subsumes the varied lived experiences of domestic workers within a market-based framework and hence cannot be perceived as an all-inclusive solution to the challenges faced by domestic workers. Routh warns that India must be conscious of this limitation of the Convention while incorporating its provisions into legal policy making.

Legal policy frameworks have also been instrumental in normalizing the gendered nature of domestic work. This explains the marginalized attention paid to the troubled dimensions of gender, sexuality and the domestic workplace. Ritu Gupta, in her chapter on **Workplace Sexual Harassment of Women Domestic Workers: Issues and Challenges in the Legal Framework in India**, highlights the challenges in executing the existing legal framework aiming to protect and prevent sexual harassment at the workplace. Throwing further light on the relationship of caste, sexuality, domestic labour and law, Sameena Dalwai, in her chapter on **Caste as a Framework to Study Domestic Labour: A Comparative Law Perspective**, discusses how caste-based hierarchies often become the sites for oppression, abuse and exploitation of domestic workers. The chapter brings forth significant insights into Indian case law on domestic work and caste and compares it with the UK Employment Tribunal Judgement in 2014, which for the first time recognized 'caste' as 'ethnicity'.

Given the complexities in the lived experiences of domestic workers, it, therefore, becomes imperative that any legal and policy intervention should be driven by reliable data evidence. Pointing out that much of our study on domestic workers draw on sociological research, Yugank Goyal and Rakesh Kumar, in their chapter on **The Informal Domestic Workers in India—A Descriptive Mapping of NSSO Data**, unpack the NSSO 68th round data to reveal crucial insights into the status of domestic workers in India. The chapter, through an analysis of the existing data, cautions against drawing generalized conclusions regarding domestic work and domestic workers including feminization and caste dimensions of the domestic workforce.

Drawing on an evidence-based approach, Deepanshu Mohan, in his chapter on **Governing Dynamics of Intra-household Bargaining Relations in Informal Urban Spaces: Reflections from the Case of Female Domestic Workers Across India**, analyses the social, economic position of female domestic workers and attempts to assess their relative bargaining power within their own households. Arguing that their relative bargaining power within own households has significant implications, the chapter makes a case for a rights-based policy discourse, which must aim at improving the overall well-being of domestic workers.

Taking the discussion on the concept of well-being forward, Sanjeev Sahni and Mohita Junnarkar, in their chapter on **Well-Being of Domestic Workers in India**, elucidate the theoretical constructs of the concept and locate it in the context of domestic work. Addressing the psychological and social dimensions of the well-being model, the chapter brings out the limitations of existing initiatives and champions the need to promote positive mental health amongst domestic workers.

To ensure decent work for domestic workers in India, it is extremely crucial to locate the discussion on domestic work within a rights-based framework. YSR Murthy, in his chapter on **Rights of Domestic Workers in India: A Critical Analysis of National Human Rights Commission of India's Efforts**, engages with a critical evaluation of NHRC's role in protecting and promoting the rights of domestic workers. The chapter urges NHRC to take on a more active role in upholding the rights of domestic workers in India and to advocate for a comprehensive legislation on domestic work.

We want to conclude by expressing our deepest gratitude to all our contributors. We sincerely hope that in some small ways, this editorial volume contributes towards a nuanced understanding of the complex and layered issue of the rights of domestic workers in India. While we are aware of the limitations of this volume in addressing all aspects pertaining to the lives and working conditions of domestic workers in India, we do hope that our contribution is useful and meaningful to all our readers.

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# Chapter 2

## Entitlements of Domestic Workers in India: Welfare or Right



Uday Shankar

### Introduction

The meaning of the term ‘domestic’ stated in the reference of ‘domestic servants’ is servants who reside in the same house with the master they serve.<sup>1</sup> The plain definition given in the dictionary identifies the individual working as a domestic worker as ‘servant’ and connects him/her with the dwelling of the masters, ‘the same house’. The meaning and context should be examined in the context of ‘work’ and not in relation to ‘interpersonal’ relationship between the ‘master’ and ‘servant’. The ‘work’ undertaken by the domestic worker need not be connected with the place of stay of the ‘worker’. The ‘work’ carried out by the domestic worker does not only satisfy the personal needs of the ‘master’ but also carries economic value in the parlance of employment. Thus, the legal concept of ‘worker’ as applicable in labour jurisprudence differs from the plain meaning given in the dictionary. However, it is this understanding of a ‘master-servant’ relationship that lies at the heart of all policy formulations and welfare measures of the government that aim at the upliftment of domestic workers. It is a noted fact that domestic workers are getting paid in cash or kind for performing the task assigned by the ‘master’ of the house. Fixing the cost of labour is guided by the remuneration prevailing in a particular locality and the bargaining power available with the domestic worker or existence of any informal association of the workers. There is economic valuation of the labour when one considers the kind of work done by him/her for the employer(s) in the domestic environment.

There is no denying the fact that the domestic workers are making a valuable contribution in increasing the efficiency of the family members of the employer and/or for him/her as well. The hours in a day spent or the nature of work executed by the

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<sup>1</sup>Black’s Law Dictionary.

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domestic worker at the house of the employer adds to the quality time or life of the members of the family of the employer. An analogy can be drawn from formal industrial relations where a worker contributes to employer's productivity by meaningfully engaging in the work assigned. Economic liberalization has a role in the creation of work opportunities for domestic workers, which is not noticeable in formal economy of labour market. Economic liberalization has made many employment-related factors irrelevant such as time zone, the significance of day and night for 'work', geographical location, language and so on. Different working hours and employment opportunities have changed the contour of domestic households. In a globalized world, with increasing and diverse employment opportunities where many 'housewives' are beginning to work outside the home or are home-based entrepreneurs, the services within the household are gaining characteristics of 'employment', requiring domestic workers to step in.<sup>2</sup> A large amount of migration of workers, which is viewed as a significant feature of 'liberalization', has also been witnessed for carrying out domestic work in the urban areas. Domestic workers are supposed to not only be regular in the work but also complete the work with efficiency so that the energy and time of the employer does not get wasted for the same household work. Although the demand for domestic workers is produced by public, global economic processes, it occurs in the so-called private sphere, rendering the work and lives of domestic workers invisible and vulnerable.<sup>3</sup> The services rendered by these workers for the employer and the demand of these workers make them integral part of the labour market, but their conspicuous absence from the legal discourse on labour law raises a question on their recognition and visibility in the formal labour market.

It is also not an exaggeration that majority of domestic workers in India belong to the vulnerable class and are migrants from far-flung places to urban dwellings, particularly women and children.<sup>4</sup> Due to the social and economic status of these workers, it becomes even more pertinent to enquire about their legal entitlements and claimable interest against the society and the state. Second Labour Commission laments the position of domestic workers in terms of abuses at the hands of employer and placement agencies, and recommends that they need to be brought within the purview of reformed labour laws.<sup>5</sup>

The chapter argues for a paradigm shift on the debate on protection of domestic workers in India. It advocates a rights-based approach over a welfare-based approach for larger integration of domestic workers in the formal labour market. The chapter prefers to not discuss the issues of human rights violations and the issues related to migration of domestic workers within India or abroad. The first part deals with definitional issues and challenges thereof. It also highlights the status of domestic workers. Further, it builds on the applicability of existing laws and policies on domestic workers along with highlighting proposals to enact a law to deal with this

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<sup>2</sup>See, Lutz (2002).

<sup>3</sup>Chang and Abramovitz (2000).

<sup>4</sup>Mahanta and Gupta (2015).

<sup>5</sup>Report of the Second Indian National Labour Commission (2002, p. 90).

matter. The absence of recognition of domestic workers in a formal labour market dilutes their claim as a right and makes it a subject matter of welfare policies of the government. In the final part, the chapter critically builds an argument that welfare-based approach should be replaced with rights-based approach towards entitlements of domestic workers in order to bring them at parity with the workforce of formal labour market.

## Domestic Worker: Definition and Nature

International Labour Organization (ILO) has defined ‘domestic worker’, long back in 1951 in a meeting of experts, as “... [a] wage-earner working in a [private] household, under whatever method and period of remuneration, who may be employed by one or by several employers who receive no pecuniary gain from this work”.<sup>6</sup> The definition is very archaic in nature and perceives the nature of the work carried out by the domestic workers as unproductive. The definition conveniently overlooks the value brought in by the workers in terms of convenience and time management for the employers and consequently, their indirect contribution to the formal economy.

The ILO Domestic Workers Convention, 2011 (No. 189), reflects this when it defines ‘domestic workers’ in Article 1<sup>7</sup>:

- (a) the term ‘domestic work’ means work performed in or for a household or households;
- (b) the term ‘domestic work’ means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

A Task Force appointed by the Government of India in its report defines ‘domestic worker’ as someone “who is employed for remuneration whether in cash or kind, in any household through any agency or directly, either on a temporary basis or permanent, part time or full time to do the household work but does not include—any member of the family of an employer”.<sup>8</sup> The term ‘domestic worker’ is also defined in the revised draft of the Labour Code on Social Security, 2018 as:

a person who is employed for remuneration whether in cash or kind, in any household ‘or similar Establishments’ through any agency or directly, either on a temporary or contract basis or permanent, part time or full time to do the household or allied work and includes a Replacement worker who is working as a replacement for the main workers for a short and specific period of time as agreed with the main worker; Explanation- household and

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<sup>6</sup>ILO (1951).

<sup>7</sup>Government of India has not ratified the Convention No. 189 on Decent Work for Domestic Workers.

<sup>8</sup>In 2009, the Union Ministry of Labour and Employment constituted a Task Force on domestic workers. The Task Force submitted a Draft National Policy for consideration. In the report, the Task Force defined domestic worker. <http://pib.nic.in/newsite/erecontent.aspx?relid=73345>. Accessed 30 June 2017.

allied work includes but is not limited to activities such as cooking or a part of it, washing clothes or utensils, cleaning or dusting of the house, driving, gardening, caring/nursing of the children/sick/old/mentally challenged or disabled persons.<sup>9</sup>

Women in Informal Employment: Globalizing and Organizing (WIEGO)<sup>10</sup> classify domestic workers based on their hours of work and the nature of the employment into part-time, full-time and live-in workers. It describes that

A part-time worker is a worker who works 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. A full time worker is a worker who works for a single employer every day for a specified number of hours (normal full Z work) and who returns back to her/his home every day after work. A live-in worker is a worker who works full time for a single employer and also 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.<sup>11</sup>

Domestic work in India, as elsewhere, is characterized by informality, precarity, poor working conditions including poor pay, lack of minimum wages, long working hours, lack of rest periods and adequate leave, lack of job security, poor or non-existent maternity and other work benefits (such as child care, pensions, medical insurance), arbitrary dismissals without notice or compensation, acute lack of social security and protection, and caste, class and gendered discrimination.<sup>12</sup>

Domestic work is also difficult to define because of lack of homogeneity in domestic workers and the diverse nature of work carried out by them. It is easier to describe domestic workers, their nature of employment and their relationship with the employer rather than giving a precise definition. They are employed either part time or full time; by a single household or multiple households; and they may reside at the place of work or commute daily. Wage fixation depends on a number of variables: location of the available work, socio-economic status of the employer, the nature of work and the expertise required, and the number of family members.

It is the 'place of work' that distinguishes domestic workers from the usual understandings of 'worker' under the ambit of labour legislations. The workers providing their services in 'private dwellings' are deprived of the benefits due to them; whereas workers, providing the same kind of labour in an organized manner, either through outsourced agency or directly, in a commercial, organized establishment, are eligible to enjoy the benefits of some of the labour legislations. Perhaps, the 'homely' ambience has factored in affection, care and respect for workers from the employers at the cost of formal contractual relationship which ought to have governed the terms of employment with precision and clarity. On account of the place of work, the domestic workers lack the ability to bargain for better working conditions, including wages, collective bargaining and a redressal mechanism. As ILO underlines, "... domes-

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<sup>9</sup>Labour Code on Social Security 2017 A Bill, 2.40.

<sup>10</sup>WIEGO is a global network focused on securing livelihoods for the working poor, especially women, in the informal economy. <http://wiego.org/>. Accessed 1 July 2017.

<sup>11</sup>Ibid.

<sup>12</sup>Chigateri et al. (2016).

tic workers [in] private households [are] often without clear terms of employment unregistered in any book, and excluded from the scope of labour legislation”.<sup>13</sup>

Asha D’Souza aptly summarizes the intrinsic difference between domestic work and other similar low-skill occupations as:

(i) the employment relationship is invisible or in other words it is often undeclared and has no written contract involved; (ii) there is an unequal balance of power between employer and employee; (iii) lack of precise job description and (iv) the expectation on the part of the employer to be available at all times.<sup>14</sup>

The imprecise definition of ‘domestic worker’ brings in fragmented legal landscape which falls short of necessary rigour to protect the interest of the worker. The practice of using different terminology also dilutes the claim of the worker in the framework of ‘contract’ and ‘work’ and brings in the ‘submission’ and ‘dependency’ as governing factors into the relationship with the employer. For better legal protection, it is desirable to cover multiple tasks performed and the place or even the duration for which they perform the work.

On statistical front, it is difficult to have an exact estimate of domestic workers on account of informal engagement and high transition amongst them. ILO estimates 67 million workers as domestic workers working worldwide, excluding child workers.<sup>15</sup> Data availability on domestic workers in India also remains an issue. A study commissioned by the government puts the number of domestic workers to be around 6 million based on various NGO sources.<sup>16</sup> The participation of females as domestic workers outshines males in this sectors; the former engage in tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children, and/or elderly and/or sick members of a family, whereas the latter carry out the work of gardeners, drivers or butlers.<sup>17</sup>

The attempt to define ‘domestic work’ is largely based upon ‘type of work performed’, ‘place of work’ and ‘employer’. The descriptions conditioned upon these factors led to the absence of social acceptance and a lack of legal acknowledgement of the work as ‘work’ within the ambit of labour law. The terminology of the domestic worker varies depending upon the nature of task such as maid, servant, household aide and household helper. The indeterminate nature of work, unspecified place of employment, unstructured designation and obtrusive definitional content lead to uncertainty in addressing the concerns of domestic workers in a comprehensive manner. The lack of clarity in the definition results in incoherent development of legal instruments, which fail to address the concerns of the subject. It also contributes to adoption of different legal measures, including policy, for addressing the issues of domestic workers.

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<sup>13</sup>International Labour Organization (2017).

<sup>14</sup>D’Souza (2010).

<sup>15</sup>Chigateri et al. (2016).

<sup>16</sup>National Skill Development Corporation. Report on Human Resource and Skill Requirement in the Domestic Help Sector, p. 8.

<sup>17</sup>The National Sample Survey Organization (NSSO) classifies the following occupations as domestic labour: housemaid/servant, cook, gardener, gatekeeper/chowkidar/watchman, governess/babysitter, tutor, driver and ‘others’.

## Legislative and Policy Measures on Domestic Workers

Labour law is instrumental to any country's economic development, industrial growth and human development. In particular, in an emerging economy like India, the strengthening of protection for the workers on labour issues around employee–employer interaction is of utmost importance. There are more than 200 labour laws operating at federal or state levels in the country. These laws cover a range of issues related to employer–employee relationship and the responsibility of the government in dealing with issues of welfare of labour such as social security, dispute redressal, safety measures, and minimum wages. Nevertheless, these laws have benefited only a miniscule portion of the total workforce—the workers of organized sector—who constitute eighty-nine per cent of the workforce of the country. The proverbial presence of law refuses to bless almost four-fifths of the working class which has been contributing immensely to the economic growth of the country.

Legal measures have eluded the cause of domestic workers since independence. At the national level, domestic workers have not found favour with the lawmakers resulting in denial of work-related benefits such as maternity leave, provident fund, leave with pay, regulated working conditions or hours of work. Lack of recognition of their work as 'work' and their employer's house as a 'place of employment' are the main reasons behind domestic workers being denied the benefits conferred by different labour legislations.

The statutory definitions of terms such as 'industry', 'employee', 'employer', 'establishment' and 'factories' are the reasons for availing the benefits accorded by laws like Industrial Disputes Act 1947, Employee's Provident Fund Act 1952, and Factories Act 1948. Domestic workers are excluded from the purview of these existing laws because of the nature of their work, the specificity of the employee–employer relationship and their workplace being a private household rather than a public or private establishment.<sup>18</sup> Other legislations, such as Trade Union Act 1926 and The Employees' Compensation Act 1923, could in principle be applied to domestic workers; but in practice, owing to interpretation of these laws, they are excluded from the beneficial aspects of these legislations too. This was argued by N. Vasanthi in an article where she says that this "could change with a change in public policy towards domestic workers".<sup>19</sup> Interestingly, it is the place of work and not the nature of work which fluctuates the fortune of the domestic workers in relation to the rights prescribed under labour laws. Majority of labour laws apply to workers who perform the same duties of cleaning, cooking, etc. in an office or factory instead of a private household, as such organized workplaces will be considered as places of employment in the eyes of law.<sup>20</sup>

Within a decade of declaration of Republic, an attempt was made to regulate the conditions of employment through a central legislation.<sup>21</sup> More than a decade later,

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<sup>18</sup>SEWA (2014, p. 2).

<sup>19</sup>Vasanthi (2011, p. 91).

<sup>20</sup>Chigateri et al. (2016).

<sup>21</sup>The Domestic Workers (Conditions of Employment) Bill, 1959.

bills with the same title were introduced in Lok Sabha in 1972 and 1977, respectively, which purported to bring domestic labour under the purview of the Industrial Disputes Act 1947.<sup>22</sup> Since then, there have been many unsuccessful attempts to legislate for this sector. The most recent was The Domestic Workers' Welfare Bill 2016 (Bill No. 204), a Private Members' Bill introduced by Mr. Shashi Tharoor. Before 2016, there were Bills introduced in the years 2015 and 2009 as Private Members' Bill by Mr. B. Mahtab and Mr. Arjun Ram Meghwal respectively. There were other Bills, such as the one developed by the National Commission for Women in 2008, and one by the Domestic Workers Rights Campaign in 2010, but as of today, there is no parliamentary legislation to protect the rights and welfare of the largest as well as the fastest growing sector of employment for women in the urban areas. With an eye on providing a holistic approach to deal with the issues of domestic workers, some of the existing labour laws have been suitably notified or expanded to extend their welfare provisions to these workers.

In the year 2006, Government of India made a very progressive decision under the Child Labour (Prohibition and Regulation) Act, 1986 by declaring prohibition of employment of children as domestic workers and in hospitality trade such as in roadside dhabas, restaurants, hotels, motels and spas.<sup>23</sup> As a first, the notification recognises domestic work as an occupation to earn means of livelihood. Household work to be carried out by an outsider on consideration of wage is an employment for the purpose of the Act. If a particular kind of work falls in the hazardous category of employment for a child, then the work should get the status of employment with all the attributes of employer–employee relationship for others.

The Minimum Wages Act, 1948 deals with the payment of minimum wage in relation to employment stated in the Schedule of the Act. The rationale of the law is to ensure minimum wage that is required for maintaining and sustaining the labour of an individual. Thus, the governments, central as well as state, carry out the task of fixation of wages for different categories of work. The central government has not notified 'domestic work' as scheduled employment under the Act. However, some of the state governments—Andhra Pradesh, Bihar, Karnataka, Kerala, Rajasthan, Jharkhand and Odhisa—have brought domestic work within the legal framework of the Act. Three states—Kerala, Maharashtra and Tamil Nadu—have each constituted welfare boards for domestic workers. These laws mandate the registration of domestic workers as beneficiaries and want them to contribute to the welfare fund which will have an overseeing body consisting of representatives of employer and employee and nominee of the state government. Some of the benefits mentioned are medical assistance, financial assistance for education of children, maternity benefit to the women worker and any other benefits which the welfare board may decide from

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<sup>22</sup>Right to Dignified Labour: A Case for Notifying the National Policy on Domestic Workers in India. [https://www.researchgate.net/publication/301326435\\_Right\\_to\\_Dignified\\_Labour\\_A\\_Case\\_for\\_Notifying\\_the\\_National\\_Policy\\_on\\_Domestic\\_Workers\\_in\\_India](https://www.researchgate.net/publication/301326435_Right_to_Dignified_Labour_A_Case_for_Notifying_the_National_Policy_on_Domestic_Workers_in_India). Accessed 5 July 2017.

<sup>23</sup>Rao (2017).



time to time.<sup>24</sup> But the only constant problem remains the implementation of these provisions.

The Labour Department of Government of Rajasthan, however, has made a radical move by notifying work hours for domestic worker as maximum eight hours a day, anything over that is to be considered as overtime. The minimum wage for domestic worker is now set at Rs. 5,642 per month, exclusive of food, accommodation and any other perks. Overtime hours are paid at double the rate. Domestic worker hired only for dishwashing and laundry are to be paid Rs. 705 per month for a household of four members; they are to be paid 10% more for every additional household member. This notification is applicable as of 1 January 2016 and will be enforced through surprise inspections.<sup>25</sup> The effort of the government is laudable as it attempts to institutionalise the value of work as a productive work in the industrial economy. The economic devaluation of the work of domestic worker is another reflection of the perceived altruistic characteristics of the employment. Allegedly, it is because of this reason that all of the seven states that have notified minimum wages for domestic work have fixed them lower than that for other unskilled labour of similar category.

The Employees' Compensation Act 1923, a colonial law, guarantees payment of compensation to employee from employer, on injury including death, while being employed. It is one of the oldest laws on social security extending the coverage to a large section of workers in the country because the applicability of the law does not depend upon the number of employees or salary of workers. The live-in domestic workers can get the advantage of the law by establishing the relationship of employer–employee regardless of the documentary proof of a formal contract with the employer.

The Unorganized Workers' Social Security Act 2008 covers domestic worker within its fold through a definition of 'self-employed workers' as "any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganized 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".<sup>26</sup> Domestic workers are included within the expression of self-employed workers. The Act provides for registration of the workers and issuing of social security cards to them. The Act constitutes a Social Security Board at the central and the state levels for advising social security measures without any power to monitor and enforce the benefits.<sup>27</sup> One of the main problems with the Act is that it does not confer as such any social security to unorganized workers. Social security schemes are also not defined in the Act. Instead, the schedules talk about the schemes, and same can be amended at any point by notification without them being discussed in the Parliament. The term 'social security' has not been defined in the law. The emphasis seems to be only on

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<sup>24</sup>For reference, Section 10 of The Maharashtra Domestic Workers Welfare Board Act, 2008.

<sup>25</sup>The Times of India (2016).

<sup>26</sup>Section 2(k) of the Act.

<sup>27</sup>Section 5 of the Act.

scheme of welfare. It is significant that in section 3(2) which refers to Schedule I, the description of these schemes is as ‘welfare’ scheme.<sup>28</sup> Moreover, the kinds of schemes enlisted in the Schedule I are schemes for the general population and not exclusively for workers. Also, the schemes provided under the Act are governed by different ministries of the Government of India.<sup>29</sup> The Act does not guarantee any minimum level of social security for all workers. The schemes given in the schedule can be extended to the unorganized sectors with necessary modifications. The Act is completely silent on the right of workers in the unorganized sector.

The various initiatives of the Government of India to simplify and rationalize the existing labour laws have something to offer to the domestic workers as well. The proposed Labour Code on Social Security 2016 acknowledges ‘domestic worker’ as a ‘worker’ within a legal frame. The code requires every employer, employee and each employer–employee relationship to be registered. This provision may act as a hurdle to give benefit to the workers of unorganized sectors, particularly domestic workers as there may not be an honest attempt to register them by the employer. The code should have allowed self-declaration by the workers in order to minimise the exploitative tendency of the employers.

A draft National Policy for Domestic Workers is under consideration by the Government of India. The policy promises, *inter alia*, inclusion of domestic workers in the existing labour legislations, right to register as workers with State Labour Department, right to form associations, right to have minimum wages and access to social security, compulsory paid leave for 15 days in a year and right to enhance the professional skills. In the policy, Government of India proposes to fix a minimum wage of Rs. 9,000 for the highly skilled full-time household helps.<sup>30</sup>

In the year 2008, the Government of India has launched a national policy, Rashtriya Swasthya Bima Yojana (RSBY), to reduce out-of-pocket expenses on health, and increase access to health care for people living below poverty line and other defined categories of unorganized workers, including domestic workers.

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<sup>28</sup>Section 3: The Act stipulates formulation of suitable welfare schemes for unorganized workers on the matters relating to: (i) life and disability cover, (ii) health and maternity benefits, (iii) old age protection and (iv) any other benefits as may be determined by the central government through the National Social Security Board.

<sup>29</sup>i. Indira Gandhi National Old Age Pension Scheme. (Ministry of Rural Development)

ii. National Family Benefit Scheme. (Ministry of Rural Development)

iii. Janani Suraksha Yojana. (Ministry of Health and Family Welfare)

iv. Handloom Weavers Comprehensive Welfare Scheme. (Ministry of Textiles)

v. Handicraft Artisans Comprehensive Welfare Scheme. (Ministry of Textiles)

vi. Pension to Master Craft Persons. (Ministry of Textiles)

vii. National Scheme for Welfare of Fishermen and Training and Extension. (Department of Animal Husbandry, Dairying & Fisheries)

viii. Aam Admi Bima Yojana. (Department of Financial Services)

ix. Rashtriya Swasthya Bima Yojana. (Ministry of Health and Family Welfare)

Three more schemes are added in the year 2016, Atal Pension Yojna and Pradhan Mantri Jeevan Jyoti Bima Yojna and Pradhan Mantri Suraksha Bima Yojana.

<sup>30</sup>Government readies domestic workers policy, proposes Rs. 9,000 minimum pay with benefit. <http://www.firstpost.com/india/govt-readies-domestic-workers-policy-proposes-rs-9000-minimum-pay-benefits-2395116.html>. Accessed 5 July 2017.

The beneficiaries under RSBY are entitled to hospitalization coverage up to Rs. 30,000 per annum on family floater basis, for most of the diseases that require hospitalization. The benefit will be available under the defined diseases in the package list. The government has framed indicative package rates for the hospitals for a large number of interventions. Pre-existing conditions are covered from day one and there is no age limit. The coverage extends to maximum five members of the family which includes the head of household, spouse and up to three dependents. Additionally, transport expenses of Rs. 100 per hospitalisation will also be paid to the beneficiary subject to a maximum of Rs. 1000 per year per family. The beneficiaries need to pay only Rs. 30 as registration fee for a year while Central and State Government pays the premium as per their sharing ratio to the insurer selected by the State Government on the basis of a competitive bidding. At every state, the State Government sets up a State Nodal Agency (SNA) that is responsible for implementing, monitoring supervision and part-financing of the scheme by coordinating with Insurance Company, Hospital, District Authorities and other local stake holders.<sup>31</sup>

Domestic workers have a very sparse presence on the legal map of the country. In the midst of more than 200 labour laws which confer rights on working class, the domestic workers find favour with only a few. Even with the laws which provide some coverage to domestic workers, there are arduous challenges to claim ‘the right’ on account of lack of formal employer–employee relationship or geographical location of the work. Law and policy measures are more oriented towards the objective of poverty alleviation than identifying rights of workers in the industry. The mapping of laws and policies reflects a very poor state of affairs about the legal protection to domestic workers. It is unjust to consider the domestic workers within the bracket of ‘poor’ people and to exclude them from many central and state laws which aggravate their inhuman conditions. This approach justifies the narrative of ‘welfare-based’ programme of the government at the cost of ‘claimable interest’ of the workers. While only a few legislations are applicable to the cause of domestic workers though indirectly, on a positive note, there have been numerous endeavours to enact a specific law to give necessary statutory legitimacy to their work and benefits related thereto.

## **Welfare or Right: Giving Due to Domestic Workers**

The Marxist theory of capitalism does not include domestic workers, as their work, which does not involve commodity production or creates profit in the market, is not considered productive. From a capitalist standpoint, domestic work can only be considered productive if it converts into commodity labour.<sup>32</sup> Thus, domestic work is not considered real work. It is considered as an extension of household work which does not get accounted in the economic scaling of growth of a country. Their work

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<sup>31</sup>Rashtriya Swasthya Bima Yojana. [http://www.rsby.gov.in/about\\_rsby.aspx](http://www.rsby.gov.in/about_rsby.aspx). Accessed 5 July 2017.

<sup>32</sup>Heitlinger (1979).

is undocumented and they are likely to have more than one employer. They are often deprived of statutory minimum wages that a waged employee can claim.<sup>33</sup>

Moreover, domestic work absorbs the uneducated and unskilled part of the population, particularly women and children. Before moving forward, there is a need to explain rights-based approach and welfare-based approach for more clarity. According to Manohar Pawar, the former is derived from the Universal Declaration of Human Rights (UDHR), which says “that all citizens have justifiable entitlement, with human dignity and worth, including basic services such as food, education, health, and employment, and justifiable duties to the community and nation-states have an obligation to meet those entitlements, and citizens have obligation to meet duties”.<sup>34</sup> The welfare approach includes appropriate management of social problems, adequately meeting human rights needs, and creating equal opportunities for people to realize their potential.<sup>35</sup>

The informal nature of employment of a domestic worker adversely affects the right to form association and to engage in effective bargaining with the employer. Cumulatively, these factors view the domestic workers as a section of the population which deserves support in the form of social welfare programme from the government. Perhaps, it is this understanding which made the governments, both central and state, to launch welfare policies for domestic workers from time to time. The problem inherent in this approach is that the entitlement under a welfare programme is seen as a ‘need’ and not as a ‘right’. It has become important to move from ‘needs-based approach’ to ‘rights-based approach’. According to J. Kirkemann Boesen and T. Martin, “human beings have inalienable rights and a deprivation of needs can often be addressed as a denial of rights. In other words, clean drinking water is not only something a person needs, it is also something he has a right to have as a human being”.<sup>36</sup> Rights always trigger obligations and responsibilities, whereas needs do not.

In welfare-based approach, the inaction of the government cannot be questioned and necessary remedial measures cannot be obtained from the court of law. The poor implementation of programmes and a widespread distrust of the bureaucracy justify the ‘rights-based’ articulation of the entitlements. The approach seeks to identify groups and people whose rights are violated, understand why certain people are unable to enjoy their rights, and redress the violation of rights. In this sense, it identifies rights-holders and their entitlements and corresponding duty bearers and their obligations, works to strengthen the capacity of duty bearers to comply with their obligations and rights-holders to claim and exercise their rights. In the articulation of rights, criteria, such as availability, accessibility, quality, affordability, and acceptability; and principles, such as non-discrimination, participation, access to information, accountability and sustainability; are taken into account throughout

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<sup>33</sup>Routh (2016).

<sup>34</sup>Pawar (2012).

<sup>35</sup>Ibid.

<sup>36</sup>Kirkemann Boesen and Martin (2007).

the process. It also develops the capacities of rights-holders to claim and realize their rights and of duty bearers to meet their obligations.<sup>37</sup>

The foundational document of the country reiterates the rights of individual in two categories—enforceable and non-enforceable in the court of law. Rights related to workers are mentioned in both categories. The Constitution pledges same rights regardless of caste, class and occupation. The relevance of dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings have been enshrined in the chapter on Fundamental Rights (Part III) and the Directive Principles of State Policy (Part IV). Indian Constitution through various articles provides for labour rights. These two parts build the basis of the constitutional protection of workers' rights in India. The provisions in the Constitution refer to equal opportunity,<sup>38</sup> non-discrimination in wage payment,<sup>39</sup> right to form association,<sup>40</sup> just and humane conditions of work and maternity relief,<sup>41</sup> right to work and social security measures in times of distress,<sup>42</sup> prohibition of all trafficking and forced labour,<sup>43</sup> prohibition of child labour under 14 years old in a factory, mines or any other hazardous employment,<sup>44</sup> and the participation of workers in the management of undertakings.<sup>45</sup> These provisions have guaranteed the rights in favour of worker which can either be enforced in the court of law, or are to be followed by the government while making laws. They obligate the government to not intervene with the enjoyment of the rights and instead take necessary measures for the implementation of the rights.

In pursuant to the constitutional ideals in relation to labour rights, the apex court has been providing meaningful content to the rights by drawing support from Part III and Part IV of the Constitution. The court has made commendable intervention in strengthening and expanding the rights of the workers. It has taken great advantage of a set of the 'directives' in relation to welfare of labour while interpreting fundamental rights. The court valued the physical and mental health of workers as an integral aspect of dignified life.<sup>46</sup> The practice of bonded labour was declared not only illegal but also unconstitutional in the light of Articles 23 and 24 of the Constitution. It was held that the right to life includes protection of the health and strength of workers, protection of children against abuse, all-round development of children, educational facilities, just and humane conditions of work and maternity relief.<sup>47</sup> While acknowledging the role of individual or corporation in employment matter, the court indicated that Article

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<sup>37</sup>Kirkemann Boesen and Martin (2007, p. 10).

<sup>38</sup>Articles 15 and 16 of the Constitution of India.

<sup>39</sup>Article 39(d) of the Constitution of India.

<sup>40</sup>Article 19(1)(c) of the Constitution of India.

<sup>41</sup>Article 42 of the Constitution of India.

<sup>42</sup>Article 41 of the Constitution of India.

<sup>43</sup>Article 23 of the Constitution of India.

<sup>44</sup>Article 24 of the Constitution of India.

<sup>45</sup>Article 43A of the Constitution of India.

<sup>46</sup>*Consumer Education and Research Centre v. Union of India*, AIR 1995 SC 923.

<sup>47</sup>*Bandhua Mukti Morcha v. Union of India* (1997) 10 SCC 549.

24 is enforceable against everyone, and by reasons of its compulsive mandate no one can employ a child below 14 years in a hazardous employment.<sup>48</sup> The court has not distinguished between the workers of organized sector and unorganized sector for the enjoyment of the rights given in the Constitution.<sup>49</sup> The workers engaged in street vending, largely informal workers, were allowed to carry on trade, profession and occupation under Article 19(1)(g).<sup>50</sup>

The resolute of the Constitution will not be accomplished unless the marginalized and vulnerable sections are also offered claimable interest through a well-crafted legal instrument. In order to promote empowerment, the role of the state is to guarantee the rule of law, provide a legal framework of rights and implement strategies that enable people to realize those rights.<sup>51</sup> The court has pointed out that the judiciary can only enforce directive principles when such principles find expression in enacted legislation. Thus, in order to realize workers' rights, such rights are to be scripted in the statute so that they can be enforced by the judiciary at the instance of an aggrieved party. The inability to access employment rights in an unorganized sector is largely due to the vagueness of exclusive legal relationship of 'employer–employee'. It is the legal characteristic which governs this relationship that denies domestic workers the benefit of rights given in various employment laws. Employer–employee relationship is founded on 'contract of service' which requires control of the employer over the manner of carrying out the contractual obligation and the employee is integral to the organization.<sup>52</sup> The contract of employment has been the primary means through which a person is recognized as an employee. Benefits and protection are also granted to those within a contract of employment. The overemphasis on 'employer–employee' relationship owes its genesis to the labour jurisprudence developed during the initial years of industrial revolution. It conveniently overlooks the element of subjugation, subordination, economic dependency and vulnerability associated with domestic workers. It is a grave injustice that the standards set by labour law on social protection and regulation of working conditions do not get extended to domestic workers and they have to rely on the generosity of both the employer and the government.

The recognition of domestic work as 'work' and the rights of domestic workers within the framework of workers' right would prevent their exploitation and abuse. The regulation of domestic employment relationship will promote the interest of both employers and employees. The rights-based approach would set a labour standard for the workers which would bring in safety and dignity to them. The rights-based perspective would also establish required administrative processes of defining minimum conditions of employment and minimum wages in the domestic work sector. The undervaluation of domestic work in labour market would also get addressed

<sup>48</sup>*People's Union for Democratic Rights v. Union of India*, AIR1982SC1473.

<sup>49</sup>See *Vishaka v. Union of India*, AIR1997SC3011; *Air India v. Nargesh Mirza*, AIR 1981 SC 1829; *Randhir Singh v. Union of India*, AIR1982SC879.

<sup>50</sup>Article 19(1)(g) states: 'to practise any profession, or to carry on any occupation, trade or business'.

<sup>51</sup>Green (2013).

<sup>52</sup>See Cooper and Wood (1962).

by a legal instrument based on rights-based approach. According to Asha D'Souza, "Specifying the rights and duties of each party will remove many of the difficulties that employers sometimes face, ranging from frequent absences, poor quality service, quitting without notice, to crimes such as theft, kidnapping for ransom and even murder".<sup>53</sup>

The ILO has formulated a list of rights for domestic workers, such as the right to organize, organized bargaining with the employer, right to collective bargaining, right to education and technical knowledge, to get justice in the case of maltreatment.<sup>54</sup> The ILO Convention has also suggested a number of measures to regulate the working conditions of domestic workers such as weekly holidays, fixed working hours, adequate compensation for overtime, the type of work to be performed, terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer, the starting date and, where the contract is for a specified period of time, its duration, the address of the usual workplace or workplaces, the name and address of the employer and of the worker.<sup>55</sup>

In the recent past, there have been a few proposals in the form of Private Members' Bills made by the Members of Parliament to alleviate the conditions of domestic workers. The Private Members' Bill moved by Mr. Shashi Tharoor specifically refers to a range of rights such as to work and earn livelihoods, to earn minimum wages, decent working conditions, access to benefits under social security schemes of the government, appropriate redressal mechanism to domestic workers.<sup>56</sup> Another such Bill was proposed by Mr. B. Mahtab with more emphasis on welfare measures for domestic workers. The Bill provided for regulated working hours with annual leave, dignified working conditions, registration of domestic workers for social security benefits and duties of placement agencies.<sup>57</sup>

Considering the nature of the workplace, the enforcement of 'right' will be a challenge for the state machineries. But, a well-thought mechanism to register the employment of domestic worker will make the employer accountable to a legal system. A defined legal structure founded on protection of the rights will successfully counter the difficulties associated with domestic work, for instance, complete absence of bargaining power, isolation from other co-workers, and unpredictable working hours. The factors related to the place of employment, indeterminate working hours and exploitation by the employers envisage a different enforcement mechanism of the rights to be conferred upon domestic workers. The monitoring of compliance with rights and enforcement of violation should be based upon conciliation and mediation, with ongoing supervision and judicial complaint mechanism to be used as a last resort.<sup>58</sup> All these are possible only when the law recognises the rights without

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<sup>53</sup>Supra note 14, p. 3.

<sup>54</sup>Domestic Workers Convention 2011(No. 189). [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189). Accessed 3 July 2017.

<sup>55</sup>Article 7 of ILO Convention No. 189.

<sup>56</sup>The Domestic Workers' Welfare Bill, 2016, Bill No. 204 of 2016.

<sup>57</sup>The Domestic Workers (Welfare and Regulation of Employment) Bill, 2015, Bill No. 21 of 2015.

<sup>58</sup>See Oelz (2011, p. 8).

relying solely upon the interested parties to bargain the terms of employment. “The Law should regulate employment, conditions of work and provide social protection simultaneously: this includes fixation of wages and other conditions of work, resolution of disputes and protection of employment besides provision of social security, childcare facilities, housing, training and skill formation”.<sup>59</sup>

The legislative intervention by the Parliament on these matters will go a long way in improving working and social conditions of domestic workers. The legal narrative based on rights framework will have a tremendous impact on the lives of millions of women and their households across the country. As it is an established fact that the presence of women in this sector is large, the protection of the workers in rights-based framework will give them necessary financial independence and control of economic resources which will be instrumental for their empowerment, a goal enshrined in the Constitution of India. Those who are engaged in this employment can get empowered only when the legal instrument recognises the decent working conditions, skill-training and social security measures as a matter of claimable interest. The existing labour laws cannot be suitably amended to bring in all-inclusive benefits to the domestic workers. The need of a separate law on rights-based narrative is necessitated by the fact of unique set-up of the workplace and involvement of middlemen in getting work to the domestic worker.

There is a need to create a legal system which shall enable the workers to understand their rights and to assert them in a situation of violations and abuse. The agenda of welfare for workers built on the platform of human rights will lead to sustainability and security, which will bring real benefit to the economic environment of the country.

## Conclusion

Labour laws in the country largely criticized on account of their rigidity. According to many economists, these inflexible laws are leading to reduced employment opportunities, and can also act as an obstacle to the ‘Make in India’ campaign. Their demand is the flexible hiring and firing of employees. Domestic workers would not oppose the drive of flexibility but would demand a right on parity with workers of organized sector as they are no less contributors to the economic development of the country. Domestic work is about rendering of services and the systems of remuneration in the private realm; therefore, it is more so required for statutory regulation of payment of wages and healthy working conditions as a matter of right and not a charity of the employer or welfare measures of the *parens patriae*, the government. Private space cannot be precluded from the creation of the rights-based enforcement mechanism on account of an arrangement between individuals. No other work in the country is made hostage of its circumstances and is left to the mercy of the job-giver rather than a legal entitlement.

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<sup>59</sup>SEWA (2014).



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# Chapter 3

## Globalization, Democracy and the Capabilities Approach to Labour Law: Making the Case for Domestic Workers in India



Tvisha Shroff

### Introduction

The recent global financial crisis has triggered renewed thinking around the globalization of the world economy and the systems of market regulation best suited to its governance.<sup>1</sup> Present-day globalization is rooted in neoliberal economic thought<sup>2</sup>—strongly associated with the deregulation of labour laws and an accompanying erosion of social protections.<sup>3</sup> Important concerns have been raised about this system of market ordering, particularly its implications for work security and equitable income distribution.<sup>4</sup> A large part of this discussion has taken place in the realm of two disciplines—economics and labour law.<sup>5</sup> Amongst economists with varying degrees of enthusiasm (or scepticism as it may be) about economic globalization, there is a basic consensus about the need for an appropriate domestic or international institutional framework to ensure that globalization proceeds in a sustainable manner.<sup>6</sup> At the same time, insofar as labour law is premised on a particular type of market ordering<sup>7</sup>—one that has changed dramatically in light of globalization and

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<sup>1</sup>Rodrik (2011, p. ix), Davidov and Langille (2011).

<sup>2</sup>Brishen Rodgers has articulated three ‘concepts’ of workplace freedom of association—social democrat, civil libertarian and neoliberal. He has defined neoliberalism as ‘the view that the state is legitimate just insofar as it creates policies and systems of market ordering’. See Rodgers (2016).

<sup>3</sup>Deakin (2011).

<sup>4</sup>Davidov and Langille, supra note 1, at 2.

<sup>5</sup>Rodrik, supra note 1, at ix; Davidov and Langille, supra note 1, at 2.

<sup>6</sup>Rodrik, supra note 1, at xv.

<sup>7</sup>Langille (2011).

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deregulation—this has been a matter of equal interest to labour lawyers.<sup>8</sup> Labour law has a significant role to play as one of the institutional frameworks ensuring fairness in the process of globalization.<sup>9</sup> However, there remains much debate as to what that role is and what ends it serves.<sup>10</sup>

This chapter presents the making of law and policy for domestic workers in India, illustrating the current scholarship on the changing conception of labour law in a globalized world—in particular the application of Sen’s ‘capabilities approach’ to the discipline. A growing body of literature has highlighted how informal workers in India have begun engaging directly with the state rather than with employers on matters of livelihood and social security.<sup>11</sup> Domestic workers—somewhat counter-intuitively, given the localized nature of their work—typify challenges in the world of work most often associated with globalization: precarious work conditions, gender-bias and work-related migration. In this chapter, I explore the piecemeal legal and policy responses to the issues of domestic workers in India, applying a capability-based conception of labour law to the processes through which these responses have evolved. Law and policy on the issues of domestic workers have been operationalized through national democratic processes—the complementary functioning of India’s legal, executive and judicial systems, political parties and media, together with public interest groups—reflecting a key aspect of the capabilities approach, namely the *freedom* of democratic participation in the making of social choices. The Draft National Policy on Domestic Workers of 2011 analysed in this chapter provides a template of contemporary approaches to labour policy, using which I illustrate both—the process through which the Draft Policy came to be, as well as its substantive content—as representative of a capabilities-oriented labour law.

In the following section, I introduce the discussion on the changing conception of labour law in a globalized world, highlighting the connections between labour law and key aspects of development.<sup>12</sup> While the chapter is focused on *legal* responses to labour markets in the present economic environment, it is situated in an economist’s narrative of globalization. I thus process to describe the changes witnessed in the world of work in the context of globalization—the decline of the standard employment relationship,<sup>13</sup> the feminization of labour<sup>14</sup> and increased rates of migration<sup>15</sup>; and demonstrate how these overlapping vulnerabilities are exemplified in the case of Indian domestic workers. I then discuss a new conception of labour law developed in response to these changes in the nature of work, introducing the scholarship on the ‘capabilities approach’ as applied to labour law.<sup>16</sup> This is followed by an analysis

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<sup>8</sup>Davidov and Langille, *supra* note 1, at 2.

<sup>9</sup>*Id.*

<sup>10</sup>Arthurs (2011).

<sup>11</sup>See generally, Agarwala (2013).

<sup>12</sup>See Langille, *supra* note 7.

<sup>13</sup>See Arthurs, *supra* note 10, at 21.

<sup>14</sup>See Atleson et al. (2008).

<sup>15</sup>See Kofman and Raghuram (2009).

<sup>16</sup>See Langille, *supra* note 7.

characterizing the democratic processes through which the legal and policy response to the issues of domestic workers in India came about as an illustration of the capabilities approach to labour law. In the final section of this chapter I demonstrate that the outcome of such a process—the Draft National Policy on Domestic Workers—has in responding to domestic workers’ issues, addressed *conditions of employment* as well as *social insurance* simultaneously, and argue that capabilities-based solutions to labour issues must indeed combine these two critical factors. I conclude noting the implications of this chapter for the political discourse concerning worker issues beyond India.

## Labour Law and Development

In his work, ‘*The Globalization Paradox*’, Dani Rodrik has argued that global markets have a weak system of governance—exacerbated by the fact that the locus of governance lies at the level of the nation state—while markets are increasingly international.<sup>17</sup> This is a concern for two reasons. First, well-functioning markets require strong systems of governance to support them. Second, market arrangements, whether for labour, corporate governance, finance or social protection, take varied forms in different settings and are best chosen through democratic means.<sup>18</sup> He has thus proposed that there are trade-offs to be made between the ‘*tri-lemma*’<sup>19</sup> of advancing the globalization agenda, maintaining national sovereignty and ensuring democratic political systems.<sup>20</sup> The *paradox* here lies in the argument that between the three choices, prioritizing democracy and strengthening national-level capacity for market regulation are economically efficient, contrary to conventional wisdom that focuses on globalization—i.e. free trade as a stand-alone development strategy. Instead, it is argued that strong democratic states are more often than not likely to have open markets.<sup>21</sup> Maintaining a careful balance between trade liberalization on the one hand, and national autonomy in the realm of social and employment issues on the other, appears to have been central to the success of the post-World War II Bretton Woods regime.<sup>22</sup> Re-assessing this equilibrium is key to the governance of global markets today. For the purpose of my inquiry into the regulation of labour in a globalized economy, Rodriks’ work emphasizes two aspects in the design of such regulation. First, it addresses *where* regulation is best conducted—at

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<sup>17</sup>Rodrik, *supra* note 1, at xvi.

<sup>18</sup>*Id.* at xviii.

<sup>19</sup>Rodrik’s ‘*tri-lemma*’ refers to the trade-offs that he describes in his book, *The Globalization Paradox: Democracy and the Future of the World Economy* as between three phenomena—increasing global economic integration (which he refers to as ‘hyper-globalization’), national sovereignty and democracy. According to him, modern-day states may choose to have only two of these—all three cannot exist simultaneously.

<sup>20</sup>*Id.*

<sup>21</sup>*Id.* at xix.

<sup>22</sup>*Id.* at xvii.

the level of the nation state; and second it explains *how* such regulatory systems must be chosen—through democratic means. Labour law, in its role as a market governance system, must necessarily be examined at both these levels. First—unlike the exchange of goods and services that are heavily regulated at the international level, labour—commoditized through the contract of employment—is primarily governed at the level of the nation state. National labour, tax and social protection laws determine employment levels and conditions of work, while immigration laws regulate the demand and supply of labour. And second, insofar as regulatory mechanisms should be chosen in a democratic manner—labour law and industrial relations systems themselves have a democracy-enhancing aspect—facilitating the participation of workers in the determination of wages, work conditions and workplace rules.

In the context of economic development, labour law in its traditional sense has been criticized for perpetuating market rigidity, impeding efficiency, slowing down employment and effectively leading to labour market segmentation.<sup>23</sup> Transnational Private Labour Regulation, recognizing these problems coupled with the weak regulatory capacity of developing countries, has proposed solutions that shift labour regulation away from the domain of national governments.<sup>24</sup>

However, newer thinking on labour law has considered its role in advancing a larger development agenda, applying a theory of development that takes a broader view of the matter than that of economic growth measured in terms of GDP—the ‘capabilities approach’.<sup>25</sup> Recognizing that the world of work can no longer be delineated from issues of trade, immigration, monetary policy, or matters of social protection and welfare,<sup>26</sup> in this new conception of the capabilities approach to labour law, labour is increasingly being considered as complementary to other issues of socio-economic development.<sup>27</sup> It recognizes that work and the workplace are appropriate starting points to advance the broader conception of human development.<sup>28</sup> Notably, it views non-state approaches to governance (corporate codes of conducts, consumer-led fair trade) as having an inherent ‘*democratic deficit*’ and instead focuses on building a link between workplace democracy and national-level democratic functioning.<sup>29</sup> In this view, the issues of labour regulation and the governance of work can no longer be separated from programmes of democracy strengthening and building state regulatory capacity.<sup>30</sup>

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<sup>23</sup>Davidov and Langille, *supra* note 1, at 1.

<sup>24</sup>Kolben (2011).

<sup>25</sup>Kolben (2010); *See generally*, Sen (2000a).

<sup>26</sup>Arthurs, *supra* note 10, at 18.

<sup>27</sup>*Id.* at 29.

<sup>28</sup>United Nations Development Programme (2015). *See also*, Sen (2000b).

<sup>29</sup>Kolben, *supra* note 25, at 386–88.

<sup>30</sup>*Id.* at 361–62.

## Challenges: Economic Shifts and the Changing Nature of Work

### *Precarious Work*

The global systems of production that have been made possible in recent times, through improvements in communication technology and the removal of barriers to trade and investment, have transformed labour markets worldwide.<sup>31</sup> With a global labour surplus now easily available, companies have responded to consumer demand for cheaper goods by taking a flexible approach to production, making weaker commitments to workers and cutting labour costs.<sup>32</sup> This has created numerous opportunities for paid employment in developing countries, and at the same time, raised concerns about the nature and terms of employment provided by such jobs.<sup>33</sup> Increased global competition has been highly correlated with a growing informal economy.<sup>34</sup> Moreover, globalization by facilitating increasing price-based competition has exerted an enormous downward pressure on the wages of *low-skilled workers*, in turn weakening their bargaining position.<sup>35</sup> The informal sector has traditionally been understood as *enterprises* that operate outside the purview of legal regimes, but a broader understanding has defined informal work on the basis of the *nature of employment*.<sup>36</sup> In this manner, labour market segmentation now accounts for both—those who are self-employed in informal enterprises as well as wage-workers in informal jobs—all of whom lack basic labour and social safeguards.<sup>37</sup> Domestic workers fall into the second category of informal wageworkers.<sup>38</sup>

In the process of economic liberalization, the lowering of tariffs has led to decreased state revenue and consequently weakened the ability of governments to provide for social safety nets.<sup>39</sup> Because of the multifaceted manner in which globalization has affected developing countries, Carr and Chen have proposed viewing its impact in terms of '*patterns of social inclusion and exclusion*'.<sup>40</sup> This accounts for the exclusion of certain groups within developing countries, primarily low-income groups, from access to economic resources such as land, housing, credit and savings.<sup>41</sup> Carr and Chen thus provide a richer, more nuanced understanding of the socio-political consequences of globalization, than those which merely attribute global

<sup>31</sup>United Nations Development Programme (2015), supra note 28, at 84.

<sup>32</sup>*Id.*

<sup>33</sup>Carr and Chen (2004); *See also*, United Nations Development Programme (2015), supra note 28, at 9.

<sup>34</sup>Carr and Chen (2001).

<sup>35</sup>*Id.* at 2–3.

<sup>36</sup>Chen (2007).

<sup>37</sup>*Id.* at 2.

<sup>38</sup>*Id.* at 3; The Unorganized Workers Social Security Act, L. No. 33 of 2008, § 2 (n) (India IN 2008).

<sup>39</sup>*Id.*; *See* Atleson et al. (2008), supra note 14, at 837.

<sup>40</sup>Carr and Chen (2004), supra note 33, at 3.

<sup>41</sup>*Id.* at 16.

value chains with the creation of jobs in developing countries.<sup>42</sup> For instance, large-scale industrial investment projects in the absence of efficient state regulation and active labour market policies have impacted the availability of, and access to local resources, nudging small-scale farmers or fishermen into informal wage work.<sup>43</sup> The experience of globalization for developed and developing countries must be distinguished for several reasons, whereas the developed world has benefitted from post-World War II welfare states and followed a linear development path of structural transformation (from agriculture to industry to services); both of these possibilities are less likely for developing countries.<sup>44</sup>

In the context of domestic work in India, economic changes in the post-liberalization phase of the 1990s created a combination of push and pull factors that led to an increase in the employment of domestic workers in India's existing large informal economy.<sup>45</sup> Changes in economic policy and the consequent loss of male wages (particularly due to the closing of textile mills), combined with an agrarian crisis, have had the effect of steering low-income women into informal employment as domestic workers.<sup>46</sup> Cutbacks in the provision of social services have created a demand for care workers, while rural-to-urban inflows of migrants have kept up its supply.<sup>47</sup> Reflecting the broader trend of increasing casualization of labour, the nature of paid domestic work in India itself has been transformed.<sup>48</sup> While domestic workers used to be employed by one household on a 'full-time' basis, they now increasingly juggle multiple jobs—the 'part-time' hours worked often adding up to much more than that of earlier full-time work.<sup>49</sup> The massive supply (in excess of demand) of paid domestic workers in Indian urban centres makes for an exploitative labour market with the workers always facing a very real threat of being dismissed and replaced at the slightest whim of the employer.<sup>50</sup> The situation of domestic workers is further complicated by an increasingly influential Indian middle class (and their accompanying economic interest in keeping domestic labour cheap<sup>51</sup>), coupled with an economic and socio-political environment unsuited to worker protection.<sup>52</sup> While the position of the domestic worker has historically been one of extreme vulnerability, changes in the labour market associated with globalization thus heighten the unique challenges they face in the present economic environment.<sup>53</sup>

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<sup>42</sup>*Id.*

<sup>43</sup>*Id.* at 2.

<sup>44</sup>United Nations Development Programme (2015), *supra* note 28, at 77; Carr and Chen (2004), *supra* note 33, at 15.

<sup>45</sup>Mahajan (2013); *See also*, Neetha (2008).

<sup>46</sup>Neetha and Palriwala (2011).

<sup>47</sup>Neetha (2008), *supra* note 45, at 27.

<sup>48</sup>Mahajan (2013), *supra* note 45, at 82.

<sup>49</sup>*Id.* at 87.

<sup>50</sup>*Id.* at 88.

<sup>51</sup>Albin (2012).

<sup>52</sup>Neetha and Palriwala (2011), *supra* note 46, at 99.

<sup>53</sup>Albin (2012), *supra* note 51, at 231.

## Feminization of the Workforce

It is well recognized that the increased availability of paid work of a flexible and transient nature resulting from globalization has boosted female workforce participation in developing countries.<sup>54</sup> Jobs of a flexible nature have allowed women to combine employment with household responsibilities.<sup>55</sup> This employment has increasingly been of the kind that has traditionally been construed by social norms as ‘*woman’s work*’.<sup>56</sup> Indeed, employment for domestic services and care work are prime examples of such ‘*female occupation*’,<sup>57</sup> exemplified by the fact that an overwhelming 83% of domestic workers worldwide are women.<sup>58</sup> The gender dimension to domestic work is twofold—it has engaged women to enable workforce participation of other women, namely mothers of children being taken care of.<sup>59</sup> India’s domestic workers alone accounted for 27.1% of all female employment in the service sector in 2004–05 attesting to this feminization of the modern-day workforce and the large share of domestic workers in it.<sup>60</sup>

## Displacement and Migration in an Era of Globalization

Another labour market consequence of globalization and its accompanying structural adjustment measures has been the loss of livelihood for many small producers and their consequent migration in search of work.<sup>61</sup> An increasing proportion of migrants at the global level are women.<sup>62</sup> There has been extensive scholarship on the nexus between economic globalization, the migration of women and care work resulting in ‘global care chains’ primarily in the context of North–South migration.<sup>63</sup> More recent work has shed light on the South–South migration of women for care work and the ‘care gaps’ it leaves in their places of origin.<sup>64</sup> In India, there has been large-scale internal rural-to-urban migration of women in search of domestic work, as well as

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<sup>54</sup>United Nations Development Programme (2015), supra note 28, at 9. *Note*: The increased labour force participation of women in India has in turn, boosted employment in the domestic service sectors; *See*, Kamala Sankaran et al., infra note 66, at 1.

<sup>55</sup>Fudge (2014).

<sup>56</sup>Atleson et al. (2008), supra note 14, at 836; *See also*, Fudge (2014), supra note 55, at 5.

<sup>57</sup>Fudge (2014), supra note 55, at 9.

<sup>58</sup>International Labour Office and Fundamental Principles and Rights at Work, Indispensable yet Unprotected: Working Conditions of Indian Domestic Workers at Home and Abroad (ILO 2015).

<sup>59</sup>Bernstein (2012).

<sup>60</sup>Studies have documented the preference amongst poor women in India for domestic work—both because it provides flexibility to shoulder the burden of employment together with their own domestic responsibilities, as well as the gender dimension of this work, wherein they perceive it to be the kind of work they are familiar with; *See* Neetha (2008).

<sup>61</sup>*See generally*, Thomas (2010).

<sup>62</sup>Kofman and Raghuram (2009), supra note 15, at 8–9.

<sup>63</sup>Fudge (2014), supra note 55, at 10; *See* Parreñas (2015).

<sup>64</sup>Kofman and Raghuram (2009), supra note 15, at 1.



immigration abroad (primarily to the Middle East).<sup>65</sup> Domestic workers in India are hence most often interstate migrant women, who come from predominantly tribal areas in the states of Jharkhand, Chhattisgarh and Odisha.<sup>66</sup>

### *Domestic Workers: A Unique Position of Disadvantage*

The case of domestic workers exemplifies the many changes and challenges to the world of work associated with globalization—evidenced by their informal work arrangements, as well as the potential for discrimination based on gender and migrant status. It has been argued that, in addition to these vulnerabilities, domestic work by its very nature is a uniquely disadvantaged position of employment.<sup>67</sup> It stands at the intersection of personal and commercial spheres of activity,<sup>68</sup> challenging labour law’s conventional notion of an ‘employment relationship’ as a contractual relation governing the work arrangement.<sup>69</sup> In this sense, domestic workers face a ‘*sectoral disadvantage*’ stemming from the semi-familial nature of their employment status and the peculiar manner of subordination associated with it.<sup>70</sup> In the Indian context, these equations of power are fuelled by complexities of class and caste, as domestic workers more often than not belong to traditionally marginalized sections of Indian society.<sup>71</sup> Indeed, recent work on this subject in India has shown that domestic work remains deeply steeped in a culture of servitude, rather than as employment of a contractual nature.<sup>72</sup> In addition to this, the lack of adequate social protection has made it common for Indian domestic workers to depend on their employers for loans and assistance in times of family or health emergencies.<sup>73</sup>

The unique employment situation of domestic workers has been reflected in labour law—they have historically been treated as a distinct category of workers under British labour law.<sup>74</sup> Indian case law has made similar distinctions between industrial and household work, effectively denying domestic workers the protection of

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<sup>65</sup>International Labour Office and Fundamental Principles and Rights at Work, *supra* note 58, at 14.

<sup>66</sup>Sankaran et al. (2007); *See also*, Neetha (2008), *supra* note 51, at 27. *Note*: The route from Jharkhand to New Delhi is said to be the most frequent one, *See* International Labour Office (2015), *supra* note 64, at 16.

<sup>67</sup>Albin (2012), *supra* note 51, at 231.

<sup>68</sup>Mundlak (2012).

<sup>69</sup>Albin (2012), *supra* note 51, at 231.

<sup>70</sup>*Id.* at 244–45.

<sup>71</sup>Neetha and Palriwala (2011), *supra* note 46, at 100.

<sup>72</sup>Ray and Qayum (2010).

<sup>73</sup>Neetha and Palriwala (2011), *supra* note 46, at 107.

<sup>74</sup>Albin (2012), *supra* note 51, at 233.

labour law.<sup>75</sup> The ILO adopted the Domestic Worker Convention<sup>76</sup> in 2011 wherein it has accounted for this inherent difficulty by treating domestic work as ‘work like any other, work like no other’.<sup>77</sup> The Convention has thus tailored certain labour protections such as work timings to the situation of domestic workers, limiting their continuous disposal within the household.<sup>78</sup> Despite having supported the adoption of the Convention,<sup>79</sup> India has not yet ratified it. In addition, the fragmented nature of domestic work, in terms of services provided, place of employment and wages earned, has made unionization or other means of collective action amongst domestic workers extremely difficult.<sup>80</sup> Past efforts to unionize Indian domestic workers have been unsuccessful often due to a lack of consensus on an agreeable minimum wage.<sup>81</sup> In addition to this, the demand for domestic work has created an unregulated market opportunity for informal ‘recruitment agencies’<sup>82</sup> inextricably linking migrant domestic workers to extortion and trafficking.<sup>83</sup> Despite egregious instances of abuse by these informal middlemen, India lacks a government regulator to address this concern.<sup>84</sup> Women from tribal districts in India hired in urban areas are mostly illiterate and face language barriers, paying exorbitantly high fees while remaining heavily dependent on their recruiters.<sup>85</sup> Each of these matters while pointing to the urgent need for state regulation is at the same time indicative of the larger challenges to women’s empowerment and agency in India.<sup>86</sup>

## Responses: A New Normative Basis for Labour Law

It has become increasingly clear that the changing world economy has posed challenges to the regulation of labour, as well as challenges to the matters of development, and that there is a significant overlap between the two.<sup>87</sup> The development framework

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<sup>75</sup>Rangaswami v. Registrar of Trade Unions, AIR 1962 Mad 231; Bangalore Water Supply and Sewage Board v. Rajappa, AIR 1978 SC 548; *See also*, Neetha and Palriwala (2011).

<sup>76</sup>Domestic Workers Convention, 2011 (No. 189): Convention concerning decent work for domestic workers.

<sup>77</sup>Albin (2012), *supra* note 51, at 247.

<sup>78</sup>*Id.*

<sup>79</sup>Director General Labour Welfare (2011).

<sup>80</sup>Mahajan (2013), *supra* note 45, at 90.

<sup>81</sup>Neetha and Palriwala (2011), *supra* note 46, at 114.

<sup>82</sup>Tsikata (2012).

<sup>83</sup>International Labour Office and Fundamental Principles and Rights at Work, *supra* note 58, at 14. *Note*: Data from the National Human Rights Commission 2002–03 shows that ninety per cent of trafficking in India is internal; *Note*: The UN Human Rights Commission has declared domestic work as a form of modern slavery, *See* Kamala Sankaran et al. *supra* note 66, at 1.

<sup>84</sup>Neetha and Palriwala (2011), *supra* note 46, at 109–11.

<sup>85</sup>*Id.* at 110–11.

<sup>86</sup>Neetha (2008), *supra* note 45, at 27.

<sup>87</sup>United Nations Development Programme (2015), *supra* note 28.

(that of trade liberalization and deregulation) put forth by the Washington consensus since the 1990s has shaped economic and institutional reform, including that of labour.<sup>88</sup> This framework for development is thus the necessary starting point for an exercise in the re-assessment of labour law. Labour law has always had a ‘theory of justice’—traditionally, one that has sought to ‘*compensate the inequality of bargaining power*’ between labour and capital.<sup>89</sup> This was done through the use of rules and norms that curtailed market power in labour markets.<sup>90</sup> However, in an economic paradigm that has strongly favoured the removal of constraints on market power, this very fundamental premise of labour law has been challenged.<sup>91</sup> In response, scholars have sought to re-conceive labour law at a normative level.<sup>92</sup>

### *A Capabilities Approach to Labour Law*

A significant section of this scholarship has applied Amartya Sen’s theoretical work on the ‘capabilities approach’<sup>93</sup> to re-orient the foundational underpinnings of labour law.<sup>94</sup> Sen has defined development not as *economic growth or rise in incomes*, but clarified that these are merely instrumental to a larger goal.<sup>95</sup> He has defined this larger goal of development as the expansion of human freedoms or in other words, the removal of un-freedoms.<sup>96</sup> In this view, human freedoms, whether political or economic, are an integral part of development itself.<sup>97</sup> Poverty (an economic un-freedom) is seen as a ‘*deprivation of basic capabilities*’<sup>98</sup>—one that can implicitly hinder the freedom of participation in labour markets.<sup>99</sup> As applied to labour law, it has been argued that this framework facilitates an inquiry into the end goals of labour regulation, suggesting that its goal is in fact to improve the lives of the people it governs.<sup>100</sup> Labour law can thus be conceived of as one of many ways to enhance human capabilities.<sup>101</sup> This view of labour law differs from others insofar as it does not consider redistribution (whether of power or economic resources) as the end goal

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<sup>88</sup>Deakin, *supra* note 3, at 157.

<sup>89</sup>Langille, *supra* note 7, at 103–5.

<sup>90</sup>*Id.* at 106.

<sup>91</sup>*Id.* at 108.

<sup>92</sup>*Id.* at 102.

<sup>93</sup>See Sen, *supra* note 25.

<sup>94</sup>Langille, *supra* note 7, at 111.

<sup>95</sup>See Sen, *supra* note 25, at 3.

<sup>96</sup>*Id.*

<sup>97</sup>*Id.* at 4.

<sup>98</sup>*Id.* at 87.

<sup>99</sup>*Id.* at 7.

<sup>100</sup>Langille, *supra* note 7, at 111. *Note:* Langille argues that there is a fundamental overlap between human freedom and human capital, which facilitates its application to labour law.

<sup>101</sup>Deakin, *supra* note 3, at 157.

of labour law, but as one of the conditions towards building human capabilities.<sup>102</sup> By informing the design of national labour market institutions, the capabilities approach to labour law thus has the potential to address the *unequal distributional effects*<sup>103</sup> that have ensued post-globalization in a number of countries.

Another aspect of Sen's work that informs the discussion on redefining and reforming labour law is the argument that human freedoms facilitate democratic participation in public life and social choices.<sup>104</sup> From this perspective, freedoms are the *means* to achieve development goals.<sup>105</sup> In its application to workplace governance, labour democracy is closely intertwined with political democracy and has the potential to enhance the functioning of political democratic processes at the national level. To enable this, strong institutional structures are essential at the level of both the workplace and the nation state, with adequate linkages between the two domains.<sup>106</sup> This manner of '*social dialogue*' can be facilitated by the complementary functioning of multiple institutions—governments, legal and judicial systems, political parties, the media, and the market together with civil society and public interest groups.<sup>107</sup> Using this framework, I analyse the slow yet progressive legal and policy responses to the issue of employment protection and social welfare provisions for domestic workers in India—first, in terms of the '*social dialogue*' that is reflected in the functioning of various Indian institutions, and later in terms of the substantive provisions of the Draft National Policy on Domestic Workers that was put forth by the Indian Ministry of Labour and Employment.

### ***Making the Case for Domestic Workers: Indian Democracy at Work***

National-level social policy and law in India, with the exception of the piecemeal progress made in certain states, has largely excluded domestic workers.<sup>108</sup> Under India's federal Constitution, matters relating to labour and social protection may be legislated at the state or national level,<sup>109</sup> and consequently, some states have taken the initiative to address the issue. The state of Maharashtra has passed a law

<sup>102</sup>Langille, supra note 7, at 116.

<sup>103</sup>Deakin, supra note 3, at 157.

<sup>104</sup>See Sen, supra note 25, at 5; See Routh (2014).

<sup>105</sup>See Sen, supra note 25, at 5.

<sup>106</sup>Kolben, supra note 25, at 381.

<sup>107</sup>Routh (2014), supra note 104, at 103. *Note:* This is a direct reference to the 'integrated institutions approach' in Dreze and Sen (2002). This manner of applying the integrated institutions approach to construct 'social dialogue' as it relates to the issues of informal workers has been conducted by Routh in his work on informal waste-pickers in India. He proposes this as an alternative to member-based collective action to facilitate social dialogue, See Routh (2014).

<sup>108</sup>Neetha (2008), supra note 45, at 26; International Labour Office and Fundamental Principles and Rights at Work, supra note 58, at 14.

<sup>109</sup>Sankaran et al., supra note 66, at 3.

to provide for welfare boards addressing the issues of domestic workers<sup>110</sup> and has published a code of conduct relating to their employment conditions.<sup>111</sup> Tamil Nadu amended its pre-existing manual workers law<sup>112</sup> in 2007 to extend its provisions to domestic workers.<sup>113</sup> The states of Kerala, Karnataka, Rajasthan and Maharashtra have each included domestic workers in their minimum wage laws.<sup>114</sup> Notably, the state of Kerala that witnesses frequent emigration of domestic workers to the Middle East<sup>115</sup> has made provisions for insurance tailored to the specific needs of emigrating women workers.<sup>116</sup> However, there is an urgent need for a national law to regulate the sector given the constant interstate movement of women in search of domestic work.<sup>117</sup>

This is not to say that domestic workers have not previously been on the national agenda for discussion. In 1959, bills<sup>118</sup> to regulate employment conditions of domestic workers were introduced in the upper and lower houses of the Indian Parliament.<sup>119</sup> Similar bills were introduced in 1972,<sup>120</sup> 1977,<sup>121</sup> 1989<sup>122</sup> and 1990,<sup>123</sup> all of which eventually lapsed. Past statutory committees on women's issues have also taken up the matter of domestic workers' rights in their recommendations, but these were not put into practice.<sup>124</sup> However, more recently there have been renewed efforts for legislation to address the concerns of domestic workers at the national level.<sup>125</sup>

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<sup>110</sup>The Maharashtra Domestic Workers Welfare Board Act, 2008.

<sup>111</sup>Sankaran et al., supra note 66, at 3.

<sup>112</sup>The Tamil Nadu Manual Worker (Regulation of Employment and Conditions of Work) Act, 1982.

<sup>113</sup>Sankaran et al., supra note 66, at 3.

<sup>114</sup>Neetha (2008), supra note 45, at 26; Sankaran et al., supra note 66, at 3.

<sup>115</sup>International Labour Office and Fundamental Principles and Rights at Work, supra note 58, at 16.

<sup>116</sup>Kofman and Raghuram (2009), supra note 15, at 17. *Note:* This includes insurance coverage for workplace harassment, theft of jewellery and death due to gender-related medical issues.

<sup>117</sup>India has an Inter-State Migrant Workers Act of 1979 that has been considered to be inadequate for the regulation of domestic workers and requires amendment to specifically include them within its purview.

<sup>118</sup>The Domestic Workers Conditions of Service Bill, 1959, The All India Domestic Servants Bill, 1959.

<sup>119</sup>Neetha and Palriwala (2011), supra note 46, at 98.

<sup>120</sup>The Domestic Workers (Conditions of Service) Bill, 1972.

<sup>121</sup>The Domestic Workers (Conditions of Service) Bill, 1977.

<sup>122</sup>The House Workers (Conditions of Service) Bill, 1989.

<sup>123</sup>Sankaran et al., supra note 66, at 2. *Note:* This bill envisaged employer contribution to a 'House Workers Welfare Fund'.

<sup>124</sup>Neetha and Palriwala (2011), supra note 46, at 98–99.

<sup>125</sup>Sankaran et al., supra note 66, at 1.

## The State—Legislature, Executive and Judiciary

An extremely significant first step as regards legislative innovation has been the specific inclusion of domestic workers in the social security law for unorganized workers.<sup>126</sup> This victory was in fact initiated by a public interest litigation<sup>127</sup> filed by a civil society organization in the Supreme Court of India, which sought the inclusion of domestic workers in social and labour laws on constitutional grounds.<sup>128</sup> In response to the case, the central (i.e. national) government proposed extending the law (the Unorganized Sector Workers Bill as it was then known) to include domestic workers.<sup>129</sup> The Indian National Health Insurance Scheme<sup>130</sup> has since been offered to all domestic workers, though its implementation has been reported to be ineffective.<sup>131</sup> Following this, the Indian workplace sexual harassment law<sup>132</sup> too came into being with a clear provision stating that households were included in the definition of a workplace.<sup>133</sup> Furthermore, two draft legislations devoted entirely to the regulation of domestic workers have recently been put forth. The National Commission for Women has proposed a comprehensive draft legislation<sup>134</sup> that provides for the regulation of the agencies that recruit domestic help, as well as the setting up a fund for domestic worker welfare provision.<sup>135</sup> Civil society organizations have proposed a modified version of this bill,<sup>136</sup> both of which have been the subject of intense debate and discussion.<sup>137</sup>

## The Media, Civil Society and Political Opposition

The role of the media in initiating recent moves towards extending legislative and social protection to domestic workers has been well recognized.<sup>138</sup> Most recently since the year 2013, there have been a slew of news reports on cases of sexual and

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<sup>126</sup>The Unorganized Workers Social Security Act, 2008 section 2 (n).

<sup>127</sup>National Domestic Workers Welfare Trust and Ors. v. Union of India and Anr., No. Writ Petition (Civil) No(s). 160/2003 (Supreme Court of India).

<sup>128</sup>Sankaran et al., supra note 66, at 3.

<sup>129</sup>National Domestic Workers Welfare Trust and Ors. v. Union of India and Anr., infra note 134.

<sup>130</sup>Rashtriya Swasthya Bima Yojana (RSBY).

<sup>131</sup>Mahanta and Gupta (2015); *See also*, Director General Labour Welfare (2011), supra note 79, at 4.

<sup>132</sup>The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013.

<sup>133</sup>The Sexual Harassment at the Workplace Bill, 2010 did not initially cover domestic workers.

<sup>134</sup>The Domestic Workers (Registration, Social Security and Welfare) Bill, 2008.

<sup>135</sup>Sankaran et al., supra note 66, at 2.

<sup>136</sup>The Domestic Worker (Regulation of Employment, Condition of Work, Social Security and Welfare) Bill, 2008.

<sup>137</sup>Sankaran et al., supra note 66, at 2.

<sup>138</sup>Neetha, supra note 51, at 28; Mahanta and Gupta, supra note 131, at 4.

physical exploitation of domestic workers in India.<sup>139</sup> This was exemplified by a horrific case that came to light in 2012, of a thirteen-year-old girl who had been enslaved into a situation of forced labour by a Delhi-based family and left locked-up in the family home when they were away on holiday.<sup>140</sup> Extensive media coverage of this case brought attention to the domestic worker issue in the Delhi state elections of 2013 where the newly formed *Aam Aadmi Party* (literally translated as party of the common man) entered the fray with a promise to regulate work conditions of domestic workers.<sup>141</sup> This was accompanied by ongoing advocacy and activism by a collection of domestic worker's unions, women's rights groups, non-governmental organizations and other member-based organizations.<sup>142</sup>

These events, though piecemeal and yet to achieve the regulatory response required, are indicative of the build-up of demand for state action and demonstrate how it can be channelled through complementary democratic institutions. This kind of collective action on a *labour issue*, while different from the traditional collective bargaining methods, reflects both—the recent shifts in labour law<sup>143</sup> and economics<sup>144</sup> scholarship—that have called for a regulatory response to the changes brought about by globalization *through democratic means* within nation states.

## The Ingredients of a Capabilities-Oriented Labour Law

### *A National Policy for Domestic Workers*

The most tangible state response to the conditions of domestic workers in India in recent times has been the setting up of a Task Force by the Indian Ministry of Labour and Employment to create a national policy in this regard.<sup>145</sup> Its mandate has been twofold—the creation of a regulatory system for the conditions of recruitment and employment of domestic workers as well as the provision of social protection to them.<sup>146</sup> Though at a draft stage, the set of recommendations put forth in the policy are promising, and indicative of the form that a law on domestic workers might take in the Indian context.<sup>147</sup> The Draft National Policy on Domestic Workers of 2011 addresses each of the concerns raised in relation to domestic workers above, in turn. In

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<sup>139</sup>The Hindu (2014), The New Indian Express (2013), The Times of India (2013), The Guardian (2015).

<sup>140</sup>Chamberlain (2012).

<sup>141</sup>AAP Manifesto: Delhi Assembly Election, 2015, 32.

<sup>142</sup>Neetha and Palriwala (2011), *supra* note 46, at 113–15.

<sup>143</sup>See Kolben, *supra* note 26.

<sup>144</sup>See Rodrik, *supra* note 1.

<sup>145</sup>Mahanta and Gupta, *supra* note 131, at 2.

<sup>146</sup>Director General Labour Welfare (2011), *supra* note 79, at 1.

<sup>147</sup>International Labour Office and Fundamental Principles and Rights at Work, *supra* note 58, at 15.

the preamble detailing its basic approach, the Draft Policy explicitly recognizes that care work and domestic service are contributions to the national economy that have been unrecognized by labour law and society more generally.<sup>148</sup> It acknowledges the principal concerns of job security, rural-to-urban migration and the gendered aspects of domestic work, as well as the particular sectoral disadvantages of domestic and care work.<sup>149</sup>

An important policy consideration in addressing labour market segmentation revolves around whether to include informal workers within the terms of the employment relationship or to relax the terms of how ‘employment’ itself is understood and legally defined to better fit the realities of the workers who fall beyond its scope.<sup>150</sup> One answer to this dilemma has been the idea of an integrated approach, coupling employment protection with social insurance, with a variety of different regulatory mechanisms complementing each other.<sup>151</sup> In this respect, the Draft Policy has provided for the inclusion of domestic workers in existing labour laws, while allowing governmental discretion to take ‘*equivalent alternate measures*’ for domestic worker protection when their inclusion in existing legislation is not feasible.<sup>152</sup> Its primary provisions relate to the registration and organization of domestic workers,<sup>153</sup> terms of employment together with social protection,<sup>154</sup> skill development<sup>155</sup> and a complaint mechanism.<sup>156</sup> Additionally, to address the sector-specific issues faced by domestic workers, it seeks to regulate recruitment agencies<sup>157</sup> as well as ensure fair recruitment terms for Indian domestic workers emigrating abroad.<sup>158</sup> Finally, as far as implementation is concerned, it has recommended supervision by a tripartite body at the state level.<sup>159</sup> The Draft National Policy thus provides a template of substantial legal provisions recommended for adoption in India. In addition to illustrating the democratic dialogue through which it has come about, the substantive provisions of the policy reveal certain key features of a capabilities-oriented labour law, two of which are highlighted below.

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<sup>148</sup>Draft National Policy on Domestic Workers, § 1.2., supra note 79.

<sup>149</sup>*Id.*

<sup>150</sup>Deakin (2013).

<sup>151</sup>*Id.* at 11.

<sup>152</sup>Draft National Policy on Domestic Workers § 4.1., supra note 79.

<sup>153</sup>*Id.* § 4.2 and 4.3.

<sup>154</sup>*Id.* § 4.4.

<sup>155</sup>*Id.* § 4.6.

<sup>156</sup>*Id.* § 4.8.

<sup>157</sup>*Id.* § 4.7.

<sup>158</sup>*Id.* § 4.5.

<sup>159</sup>*Id.* § 5.2.



## Employment Guarantees and Social Insurance

It has been argued that one of the vital contributions of the capabilities approach to labour law is that it successfully reconciles a normative basis for labour law (advancing human capabilities), with the functioning of the free market—positions that have been viewed as conflicting in the traditional narrative of labour law.<sup>160</sup> Specifically, Sen has highlighted that inequities of income (resulting from entirely or highly unregulated markets) can often hinder the development of human capabilities to the detriment of market efficiency, thus emphasizing *human resource* development in the pursuit of economic growth.<sup>161</sup> Building on the use of the capabilities approach in the Supiot report in the context of the European labour market,<sup>162</sup> an argument has been made in favour of the *constructive role* of social rights in facilitating market functioning. Inherent to this view is a *systemic approach* to markets—the principle that legal institutions do shape market behaviour and in fact, ought to play a role in market coordination.<sup>163</sup> Social protection mechanisms thus play a ‘*market correcting function*’<sup>164</sup> that have taken shape simultaneously with democratic politics and modern markets in Western Europe and North America.<sup>165</sup> This is amply reflected in India’s Draft National Policy on Domestic Workers that simultaneously recommends regulating employment conditions for domestic workers, and supplementing it with provisions for social welfare.<sup>166</sup> In fact, this dual approach to labour policy making was embedded in the design of the Task Force’s work programme that was conducted in two distinct phases—the first focusing on social insurance provisions and the second on the regulation of work conditions.<sup>167</sup>

## A New Role for Trade Unions

The second implication of the labour law and development view is that it envisages a different manner of collective bargaining and a new role for trade unions.<sup>168</sup> Building stronger connections between labour democracy and national democracy requires effective institutions at the workplace.<sup>169</sup> Trade unions, having conventionally engaged in industrial collective action efforts, are positioned to adapt their role to function in this broader civic space.<sup>170</sup> In the case of domestic workers in

<sup>160</sup>Langille, *supra* note 7, at 119; See Browne et al. (2002).

<sup>161</sup>See Sen, *supra* note 25, at 11–145.

<sup>162</sup>Browne et al. (2002), *supra* note 160.

<sup>163</sup>Deakin, *supra* note 3, at 162.

<sup>164</sup>*Id.* at 164.

<sup>165</sup>*Id.*

<sup>166</sup>Draft National Policy on Domestic Workers, § 4.4., *supra* note 79.

<sup>167</sup>Mahanta and Gupta, *supra* note 131, at 2.

<sup>168</sup>Lester (2011).

<sup>169</sup>Kolben, *supra* note 25, at 380.

<sup>170</sup>Lester (2011), *supra* note 168, at 329.

India, this is clear from the activist role that various domestic worker collectives have played in pushing forward the case for state action.<sup>171</sup> This has ranged from pursuing public interest litigation,<sup>172</sup> to representing domestic workers' interests on national committees as well as conducting domestic worker rights awareness campaigns. Acknowledging the important role of such mobilization of worker groups, the Draft Policy specifically recommends that the government eliminate any legal barriers to the recognition of domestic worker collectives as trade unions<sup>173</sup>—a clear break from the earlier case law that excluded them from this application of labour law provisions. The provision for tripartite implementation of the Policy<sup>174</sup> too is indicative of the support for domestic worker collectives taking on the more conventional role of a trade union. While this approach may have limited application in less democratic regimes, the causality will likely run both ways with potential positive 'spillovers' from workplace democracy to national democracy.<sup>175</sup>

## Conclusion

In conclusion, through the case of domestic workers in India, this chapter illustrates how a capabilities approach to domestic worker rights has the potential to address concerns regarding employment conditions and social protection, while also accounting for sector-specific disadvantages. National-level democratic institutions can provide an effective channel through which these changes may be brought about. The domestic worker policy response in India demonstrates how democratic deliberation about the choice of labour market institutions is workable in a middle-income democracy. It remains the case, however, that such reform is deeply tied to the political and economic regime of the day. The recent standoff between a group of domestic workers and residents of a gated apartment complex over allegations of exploitation of a domestic worker in Noida, Uttar Pradesh, has manifested a deep-rooted class divide.<sup>176</sup> The incident at first cast some doubt as to whether India's democratic institutions will continue to serve this cause and eventually led to a revival of the Draft National Policy on Domestic Workers.<sup>177</sup>

Of the three dimensions of Rodriks' globalization *tri-lemma*, the manner of addressing labour regulation described here prioritizes two factors—national sovereignty and democratic state functioning. Current political developments in the industrialized world have brought to the fore the tensions between national sovereignty, economic globalization and democratic politics. This includes the fram-

<sup>171</sup>Neetha and Palriwala (2011), supra note 46, at 113–15.

<sup>172</sup>Sankaran et al., supra note 66, at 3.

<sup>173</sup>Draft National Policy on Domestic Workers, § 4.3., supra note 79.

<sup>174</sup>Id. § 5.2.

<sup>175</sup>Kolben, supra note 25, at 381–88.

<sup>176</sup>The Guardian (2017).

<sup>177</sup>The Economic Times (2018).

ing of Britain's continued membership of the European Union as undermining its sovereignty and the rising tide of trade protectionism and anti-immigrant rhetoric in the USA as a reaction to globalization. All of these issues are closely related to the organization of labour markets. The concerns of workers that were in the recent past 'bargained for' at the level of the workplace are today at the front and centre of national, and even international political debates.

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# Chapter 4

## Situated Experience as Basis of Legitimate Law-Making: ILO Convention 189 and Domestic Workers in India



Supriya Routh

### Introduction

In 2011, the International Labour Organization (ILO) promulgated the Decent Work for Domestic Workers Convention and Recommendation, which India is yet to ratify. Recognizing the centrality of domestic work for economic productivity, the ILO Convention adopts a human rights approach to addressing marginalization and insecurity of domestic workers. In addition to declaring that labour rights enumerated in existing ILO standards are applicable to domestic workers unless they are expressly excluded, the Convention devises specific safeguards for domestic workers. One of the principal contributions of the Convention is that it recognizes home as a worksite thereby obliterating the public/private distinction in conceptualizing valuable work that is worthy of legal cognizance.<sup>1</sup>

The Convention has generally received positive evaluations from commentators.<sup>2</sup> As this chapter discusses in the following parts, while it is correct that the Convention offers an important shift in our focal point in conceptualizing the idea of work, it falls short of changing our perspective of work and succumbs to the market-centric justification of economic productivity in recognizing the value of work. Furthermore, the chapter will argue that because of the ILO's tripartite framework, the Convention is also limited in its scope insofar as it allows integration of decentralized heterogeneous experiences of domestic workers into the domestic legal policy-making framework.

By looking at the unique experiences of domestic workers in some parts of India, the chapter argues that an overarching legal framework, such as the ILO Convention, needs to fashion sufficient scope for decentralized legal entitlement in order

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<sup>1</sup> See ILO (2011).

<sup>2</sup> Blackett (2012, 2014), Albin and Mantouvalou (2012), Pape (2016).

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to promote aspirations of domestic workers in their respective local contexts. The ILO Convention, as important as it is, does not pay more than lip service to this decentralized legal perspective. This decentred logic is important because the nature of domestic work is such that the idea of work could barely be separated from the worker and if this embodied understanding of worker (i.e. work being inseparable part of a workers' overall life conditions) is to prevail, their diversified autonomous aspirations need to be respected.

Drawing on Jürgen Habermas' idea of legitimate law-making and Dorothy Smith's institutional ethnography—an alternative sociology wherein workers are treated as experts of knowledge production—the chapter contends that the ILO Convention is insufficiently attuned to the treatment of domestic workers as autonomous beings in their heterogeneous circumstances and therefore fails to account for the situated experiences of such workers. In the light of these limitations, the ILO Convention should not be seen as a conclusively secured ground for domestic workers' autonomous self-realization, but rather an instrument in the continued politics of decent work for domestic workers.

In the following part, the chapter discusses the diversity in the experiences of domestic workers in India and analyses the extent of legal coverage afforded to them in the country. The chapter then goes on to discuss the ILO Convention on domestic work, indicating the limitations inherent in the Convention in accounting for the heterogeneity of domestic workers' experiences and subjugating their experiences to a market-based logic of economic productivity. On the basis of Habermas and Smith's articulations on the importance of experience in legal policy-making, the chapter subsequently argues why abstract categories of legal rights (in ILO instruments) need to make adequate space for experience-based regimes of legal entitlements. This part is followed by a brief conclusion.

## **Domestic Workers and Law in India**

Aspirations and needs of informal workers, even within a specific national jurisdiction, are heterogeneous. Thus, concerns of domestic workers even within India are diverse. Although engagement of male domestic workers is prevalent in the country, domestic work is primarily a woman's work in India (as elsewhere).<sup>3</sup> It would be wrong to assume a uniform working pattern in domestic work. Domestic work is mainly of two kinds—live-in wherein the worker lives in the same household where she works and live-out wherein the worker only works in the household while living someplace else. Living out could involve situations where the worker performs her work in only one household and situations where the worker works at several households.

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<sup>3</sup>Devika et al. (2011) at 187–188; also Palriwala and Neetha (2010) at 511–512, 517; also see Bartolomei (2010) at 93–96.

In these diverging work situations, domestic workers may be either employed through an employment relationship or engaged in self-employment (especially when they work at different households). They could be engaged in one activity (such as cooking) or several activities in the same household. These manners of organizing domestic work lead to different work-life trajectories of domestic workers. Varied concerns of domestic workers do not only arise out of the different ways of organizing their work, but also relate to their specific life situations. It is, thus, important to note that conditions of domestic workers at work cannot be assessed in isolation from ‘other insecurities and vulnerabilities in their lives’.<sup>4</sup>

For example, just as family values and altruistic motives push young girls to undertake domestic work, motherhood decreases their job security.<sup>5</sup> Moreover, domestic workers’ caste, religion, ethnicity, class, and migration status determine the nature of work they will be engaged in.<sup>6</sup> Notions of purity (flowing from religious prejudices) determine whether domestic workers would be engaged in cooking or some other activities such as childcare or old-age care.<sup>7</sup> Likewise, age, marital status, and life stages determine domestic workers’ work profile and their employment situation (i.e. live-in or live-out).<sup>8</sup> Sometimes, seemingly mundane issues such as location, distance, and travel times shape the nature of their engagement.<sup>9</sup>

Employment relationship between a domestic worker and her employer, when it exists, is unlike that of any other strictly contractual relationships. These are semi-contractual relationships where the terms of engagement are often vague and roughly articulated.<sup>10</sup> Although there are adverse outfalls of this semi-contractual personal relationship (which often is slightly deeper than fiduciary relationship), domestic workers often manoeuvre this relationship to their advantage (especially during personal and family emergencies).<sup>11</sup> However, this semi-contractual relationship is routinely exploited by employers (or clients) insofar as domestic workers are required to perform additional responsibilities without pay or remain ‘on call’ for 24 hours (the latter is particularly true of live-in workers).

Domestic workers often work part time and supplement their income from other sources that are equally uncertain and informal.<sup>12</sup> While flexible hours and working arrangements as domestic workers are preferred by some workers so that they can balance their work and home responsibilities or work at multiple households, for

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<sup>4</sup>Mattila (2016) at 74–84, 85–86.

<sup>5</sup>Ibid. at 77–80.

<sup>6</sup>Ibid. at 85; also Neetha and Palriwala (2011) at 102–104; also Palriwala and Neetha (2010), *supra* note 3 at 517–518.

<sup>7</sup>Mattila, *supra* note 4 at 73–74.

<sup>8</sup>Mattila, *ibid.* at 68, 71; also Neetha, *ibid.*, 139–163 at 149.

<sup>9</sup>Coelho (2016) at 100.

<sup>10</sup>Neetha and Palriwala (2011), *supra* note 6 at 107; Mattila, *supra* note 4 at 72.

<sup>11</sup>Sarkar (2015) at 514–515; also Neetha and Palriwala (2011), *ibid.* at 103, 108; also Mattila, *ibid.* at 72.

<sup>12</sup>Sarkar, *ibid.* at 508.

others such flexibility represents insecurity.<sup>13</sup> While working flexible hours in each household, several domestic workers end up working for much more than maximum stipulated working hours for industrial employees in India.<sup>14</sup>

When domestic workers work at several households, they consider themselves as service providers rather than employees.<sup>15</sup> In this situation, then, domestic work becomes self-employment in distinction to waged employment, although there might still be substantial dependence by the workers on each one of the client households they serve.<sup>16</sup> When domestic work is performed as self-employment, the concerns of workers become somewhat different than when they are considered employees in a long-term relationship with an employer. Any legal entitlement strategy, therefore, needs to take account of this distinction between self-employment and employment relationship while devising substantive safeguards for domestic workers.

Although there are social and local norms and practices involving domestic work, in spite of several attempts (both inside and out of parliamentary proceedings) no comprehensive legislation specifically addressed to domestic workers has been enacted.<sup>17</sup> Conceptualized within the capitalist logic of market-based economic productivity (separated from kinship and social domains) by means of an employment relationship, labour law has had justificatory difficulties in perceiving the home as a workplace, which is why domestic workers are often excluded from laws affording comprehensive safeguards to employees.<sup>18</sup>

However, this does not mean that domestic workers operate in complete legal vacuum. In some states in India, such as Kerala, Karnataka, Maharashtra, Bihar, and others, minimum wage is legally guaranteed for domestic workers.<sup>19</sup> Some states such as Kerala, Maharashtra, and Tamil Nadu have enacted social security laws for domestic workers.<sup>20</sup> It is plausible that the shops and establishments laws of some of the states could be usefully invoked for better monitoring domestic workers and safeguarding their interests. But these state statutes cover specified profit-making establishments that do not include an employer's home-related domestic work.<sup>21</sup>

At the federal level, although some scholars argue that statutes such as Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 and Contract Labour (Regulation and Abolition) Act 1970 are applicable to domestic workers, the coverage of these laws is extremely limited insofar as domestic workers

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<sup>13</sup>Sarkar, *ibid.* at 509–513; also Coelho, *supra* note 9 at 100–101, 111; also Neetha (2016) at 158–159.

<sup>14</sup>Sarkar, *ibid.* at 513–514.

<sup>15</sup>Devika et al., *supra* note 3 at 198.

<sup>16</sup>*Ibid.*; also see Mattila, *supra* note 4 at 69.

<sup>17</sup>Neetha and Palriwala (2011), *supra* note 6, at 98–99, 100–101; Mattila, *ibid.* at 72–74; Neetha (2016) at 154–156.

<sup>18</sup>Neetha and Palriwala (2011), *ibid.* at 99–100.

<sup>19</sup>Sarkar, *supra* note 11 at 504; Neetha and Palriwala (2011), *ibid.* at 115.

<sup>20</sup>Neetha and Palriwala (2011), *ibid.* at 115–116.

<sup>21</sup>For example, see the Delhi Shops and Establishments Act, 1954; also see the Bombay Shops and Establishments Act, 1948.



are concerned.<sup>22</sup> For example, the Inter-State Migrant Workmen Act regulates the employment of internal (i.e. not international) migrants. This law is particularly helpful to regulate the conduct of contractors (i.e. placement agents) supplying domestic workers to employers. However, the law is applicable only when an employer or a contractor employs five or more migrant workers.<sup>23</sup> While employment agents (or agencies) may be monitored by this law, which specifies registration of migrant workers (s. 6), documentation (s. 12), wages, allowances, and other conditions of service (ss. 13, 14, 15, 16), it is difficult to cover employers who normally employ less than five domestic workers.

Similarly, although the Contract Labour Act safeguards certain minimum conditions at work in a triangular employment relationship wherein workers perform work for a principal employer through an intermediary, it is applicable where twenty or more workers are employed. Thus, like the Inter-State Migrant Workmen Act, the Contract Labour Act may be employed to regulate the activities of an intermediary (i.e. placement agency or contractor) engaging several workers at the same time; it is unlikely to be invoked for domestic workers working in households.

On the other hand, insofar as major labour laws such as the Industrial Disputes Act 1947, the Industrial Employment (Standing Orders) Act 1946, the Contract Labour (Regulation and Abolition) Act 1970, and the Trade Unions Act 1926 are concerned, exclusion of informal workers happens not only because of numerical threshold, but because of the way these laws conceptualize workers. According to these latter mentioned statutes, only those workers who are employed in waged employment can become beneficiaries of the statutory provisions, which means that self-employed and contributing family workers get automatically excluded from the purview of these major legislative safeguards in India.

However, developments in at least two of the above-mentioned statutes—the Industrial Disputes Act and the Trade Unions Act—have substantially expanded the scope of these laws. In the Indian Supreme Court judgement *Bangalore Water Supply & Sewerage Board v. A Rajappa and Others*,<sup>24</sup> the definition of industry was freed from its numerical threshold and expanded to include *any economically productive activity* performed through the cooperation between employers and employees. As a result of this decision, even smaller (but not miniscule with one or two employees) economic activities could be defined as industry and thereby covered by the Industrial Disputes Act. This expansion means that activities that were too small to be brought within the scope of the law earlier could now be covered by it and regulated through established statutory frameworks.

Although the *Bangalore Water Supply* decision expanded the legislative scope, it still remained confined within the employer–employee model. The employment relationship model was challenged by the trade union Self-Employed Women’s

<sup>22</sup>See Sankaran et al. (2008, 2017), Sankaran (2017); also see generally Neetha and Palriwala (2011), supra note 6.

<sup>23</sup>Section 1(4), Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979.

<sup>24</sup>(1978) 3 SCR 207.

Association (SEWA), which registered as a trade union—after some unsuccessful attempts—under the Trade Unions Act. While the Trade Unions Act, in keeping with other Indian industrial relations statutes, envisages trade unions as *employees' organization* in order to bargain with an employer, SEWA is an organization of self-employed women workers without any fixed employer. Since SEWA workers did not have an employer, the government initially refused to register their organization as a trade union. It took some time for SEWA to convince the authorities that a trade union of self-employed workers could also be registered under the law. Thus, there is now scope under some of the industrial relations statutes in India to cover both waged and self-employed workers, even if they undertake minor economic activities. What is conceptually missing from the legal framework is the recognition of work that may not be economically productive.

In 2008, the Indian parliament enacted the Unorganized Sector Social Security Act in order to 'provide for the social security and welfare of unorganized workers'.<sup>25</sup> The law defines unorganized worker (informal workers are termed unorganized workers in India) as 'a home-based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organised sector who is not covered by [the Employee's Compensation Act 1923, the Industrial Disputes Act 1947, the Employees' State Insurance Act 1948, the Employees' Provident Funds and Miscellaneous Provisions Act 1952, the Maternity Benefit Act 1961, and the Payment of Gratuity Act 1972]'.<sup>26</sup> This means that the coverage of the law extends to both waged and self-employed workers working in establishments engaging less than ten workers.<sup>27</sup>

The law divides responsibilities between the federal and the state governments for devising specific social security safeguards such as life and disability benefits, health and maternity benefits, old-age security, provident fund, employment injury benefit, housing, educational schemes for children, provision for skill-upgrading, old-age housing, and funeral assistance.<sup>28</sup> Some scholars argue that combining the diverse concerns of heterogeneous informal workers—both employees and self-employed—together in the same law is destined to fail because the needs and aspirations of the diverse categories of workers are quite varied.<sup>29</sup> What has also been pointed out is that the law lacks any woman worker-specific provision in spite of the fact that a significant portion of the informal workforce consists of women workers.<sup>30</sup>

In addition to the 2008 law, domestic workers may also avail the limited work entitlement ensured by the Mahatma Gandhi National Rural Employment Guarantee Act 2005 (NREGA). The 2005 Act ensures 'livelihood security of the households in rural areas' by guaranteeing *at least* 100 days of unskilled manual wage employ-

<sup>25</sup>See 'Preamble' to the Unorganized Sector Social Security Act 2008, Act No. 33 of 2008.

<sup>26</sup>Section 2(m), Unorganized Sector Social Security Act 2008.

<sup>27</sup>See the definitions of 'unorganized sector' (section 2(l)), 'self-employed worker' (section 2(k)), and 'wage worker' (section 2(n)), Unorganized Sector Social Security Act 2008.

<sup>28</sup>Section 3, Unorganized Sector Social Security Act 2008.

<sup>29</sup>Hensman (2010) at 198; also see Hirway (2006).

<sup>30</sup>Goswami (2009).

ment to every household each financial year (Preamble, s. 3, NREGA). The NREGA guarantees that if a government cannot provide manual wage employment to a member of a household in a rural area upon demand (made by an adult member of such household), the government would offer unemployment allowance (s. 7) to such an applicant.

A remarkable feature of this 2005 Act is that it secures work for women workers in the sense that at least one-third of the workers employed under the scheme should be women (Schedule II: Entry 6). This feature of the law does not only ensure right to work for women, it reflects gender sensitivity by providing work to women at the vicinity of their home so that they can balance their work with their family responsibilities and perhaps engage in other productive activities.<sup>31</sup> Additionally, the NREGA also mandates crèche facility for young children of the women workers. These provisions in the law further the constitutional right to protective discrimination in favour of women workers.<sup>32</sup>

Additionally, several institutions including kinship, placement agencies, and local norms shape the conditions at work for domestic workers.<sup>33</sup> Localized norms and practices often supplement (and sometimes substitute) wages paid in cash with that in kind.<sup>34</sup> These local and activity-specific regulation and organization of informal activities, manifest a complex and nuanced domain of regulation, attuned to the unique characteristics of specific activities, workers' cultural location in performing the activities, and the socio-economic, political context in which these activities are undertaken.

These localized forms of regulation do not attempt to generalize the particular experiences of specific categories of informal workers. These regulations, even if not explicitly, do acknowledge that specific experiences of workers need to be the basis of any effective regulation aiming at improving conditions of such workers. However, although one needs to acknowledge the role of local norms and practices in the lives of domestic workers, some of the social norms and local practices flow from patriarchal traditions and are often exploitative in character. Patriarchal social norms and traditions normalize domestic work as women's work.<sup>35</sup> Because of this normalization, it becomes difficult for legal policy to take cognizance of women domestic workers' contribution in domestic work. Recently, however, with the passage of the ILO Convention on domestic workers this normalization of women's domestic work has been challenged and domestic work has been legally characterized as an economically productive activity.

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<sup>31</sup>Khera and Nayak (2009) at 51–53.

<sup>32</sup>Articles 15, 16, Constitution of India, 1950; also see generally Khera and Nayak, *ibid*.

<sup>33</sup>Neetha and Palriwala (2011), *supra* note 6 at 100–101, 110.

<sup>34</sup>*Ibid.* at 112; Sarkar, *supra* note 11 at 505.

<sup>35</sup>Neetha and Palriwala (2011), *ibid.* at 106–108; also see Coelho, *supra* note 9 at 97–98, 115–116.

## ILO Convention on Domestic Workers

Authors both from within and outside of the ILO have generally articulated a positive evaluation of the Decent Work for Domestic Workers Convention (No. 189).<sup>36</sup> They rightly note that by bringing the household within the purview of public regulatory framework, the ILO has overcome a substantial barrier in the recognition of domestic work as valuable labour. What was largely hidden from public scrutiny as a private affair is now a matter of public interest.<sup>37</sup> The Convention No. 189 not only recognizes domestic work, but also articulates comprehensive safeguards for domestic workers. The Convention seeks to *overcome the vulnerability* of paid domestic workers who *significantly contribute to the global economy* by offering ‘standards specific to domestic workers’ (Preamble, Convention No. 189, emphasis mine). The Convention adopts a human rights approach to overcoming vulnerability of domestic workers, particularly emphasizing the core ILO Conventions identified in the 1998 ILO Declaration on Fundamental Principles and Rights at Work (Art. 3).<sup>38</sup>

Member states are called upon to treat domestic workers *at par* with other industrial workers albeit after recognizing the specific character of domestic work (Arts. 10, 14). The Convention also mandates written contract with detailed terms, explicit communication of contractual terms to domestic workers, minimum wage, safe and healthy conditions at work, protection against harassment and violence, and fair terms of employment (Arts. 5, 6, 7, 8, 11, 13). In addition to requiring payment of wages in cash, the Convention recognizes the complementary nature of payment by kind (Art. 12). It also makes specific provisions for domestic workers migrating to another country for work and for the regulation of employment agencies facilitating such migration (Arts. 8, 15). Internationally migrating live-in domestic workers are allowed to retain their travel and identity documents and to leave the employer’s household when they are on weekly or annual leave (Art. 9). However, the emphasis of the Convention is on overcoming obstacles faced by international migrants migrating from the Global South to the Global North rather than internal migration and the problems encountered by them.<sup>39</sup> In addition to detailing several of the safeguards enumerated in the Convention, the Recommendation Concerning Decent Work for Domestic Workers (No. 201) articulates additional safeguards for domestic workers.

It is true that Convention 189 offers a deeper understanding of problems faced by domestic workers. It is also true that the Convention is an important step towards recognizing the household as a worksite and domestic work as an important category of work. However, the Convention misses a remarkable opportunity in articulating a more nuanced legal treatment of domestic workers. Although the Convention treats household as the site of employment, it is far from overcoming the narrow perspective of labour regulation formulated with reference to the market-oriented idea of

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<sup>36</sup>See references cited in footnote 2.

<sup>37</sup>Blackett (2011) at 11–14.

<sup>38</sup>Blackett (2012), *supra* note 2, at 780, 783–784.

<sup>39</sup>*Ibid.* at 786–790.

economic productivity. If the underlying logic of the Convention is accepted, the only way of taking cognizance of domestic work, then, lies in their ultimate—but indirect—contribution to market productivity.<sup>40</sup>

Domestic workers' direct contribution to the household remains unrecognized. As mentioned earlier, domestic workers share more than mere contractual relationship with their employers. While they are not members of the employer's family, their relationship to their employers is frequently (but not always) characterized by emotions such as empathy, compassion, and pity. A market-focused economic productivity-centred approach to acknowledging domestic work is ill-equipped to account for the emotional components of domestic work, which is central to the overall experiences of domestic workers. Additionally, the indirect attribution of market value to domestic work is disrespectful to domestic workers in the sense that in order to be considered valuable work, their activity needs to be dependent on other workers' economic productivity who would have received services from such workers.

Relatedly, since the Convention recognizes domestic work only when it is performed in an employment relationship,<sup>41</sup> unpaid and self-employed domestic workers remain excluded from the coverage of the Convention. Unpaid domestic workers often work for family members, including extended family members. Domestic workers performing work at several households often consider themselves self-employed—as in the Indian state of Kerala, discussed earlier—rendering services to several clients at the same time. Indeed, it is possible to interpret domestic work performed in these manners as subordinated relationship akin to that of employment relationship, but under these circumstances such juridical categorization only reinforces the bankruptcy of juridical imagination, which the Convention seeks to overcome. It was, therefore, central to the objectives of the Convention to recognize domestic work irrespective of an employment relationship.

Furthermore, as discussed earlier, the characteristics of domestic workers in India suggest that domestic workers are at different stages of their lives and diverse in their socio-cultural background. They are also at varied level of vulnerability and marginalization. Accordingly, their expectations from their work are also varied. Of course, there are certain concerns such as wages, health, and security, which are common to workers from diverse backgrounds, but thinking of domestic workers as a single group for legal intervention is problematic. Although the Convention calls on member states to recognize this inherent heterogeneity of domestic workers, the ILO's tripartite framework is not conducive to a diversified understanding of situated experiences of domestic workers.<sup>42</sup>

The Convention encourages ILO member states to engage 'most representative organizations of employers and workers' in tripartite dialogue in implementing the

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<sup>40</sup>That is how Adelle Blackett, an influential scholar instrumental in the promulgation of the ILO Convention, begins one of her many scholarly contributions to the subject. See Blackett (2011), *supra* note 37, at 1–5.

<sup>41</sup>*Ibid.* at 17–20.

<sup>42</sup>Although during the discussion process leading to Convention 189, non-employer and non-trade union organizations were heard, they were heard as additional participants to the dialogue process, not integral to it. See Blackett (2012), *supra* note 2 at 791–793.

Convention in their domestic jurisdictions (Arts. 2, 13, 14, 15, 18). As is well documented, the most representative organizations of workers often find it difficult to organize informal workers including women domestic workers.<sup>43</sup> It is also unlikely that employers of domestic workers will form their own organizations. Under these circumstances, the heterogeneous concerns of domestic workers might end up being unrepresented or underrepresented in policy circles. However, there are some well-known organizations of domestic workers in India. Few of these organizations have also been successful to a certain extent in advocating their agenda. In any case, while for some of these organizations, the challenge is to claim a negotiating space, for others the challenge is to represent the diversified interests of domestic workers without subsuming them into a unitary programme.

If representation of diversified plural concerns of domestic workers were a valid objective, the politics necessary in the context of such workers, then, would have to be a politics of decentralization. While naturalization of patriarchal division of labour may have been legally overcome through Convention 189, it cannot be seen as a culmination of the struggle for recognition and autonomy of domestic workers. Instead of a conclusion, the Convention should be seen as an important component in the continued politics of recognition and self-determination of domestic workers.<sup>44</sup> Although the Convention is an important step in the continued politics of domestic workers, it fails to underline a rich account of aspirations of domestic workers because of its inability to expand the horizons of social dialogue outside the tripartite bargaining structure and overcoming the employment relationship-based economic productivity framework. While it is difficult for the ILO to overcome its formative tripartite logic, surmounting the other limitations would have been possible had the Convention devised adequate space for accounting for the lived experiences of domestic workers. In the following part, emphasizing the centrality of workers' autonomy, the chapter argues that rather than a human rights-based strategy furthered by the ILO<sup>45</sup> it is by means of decentralized legal policy-making attuned to workers' lived experiences that domestic workers' aspirations could be facilitated.

## Domestic Workers' Experience and Legitimate Law-Making

According to Jürgen Habermas, the normative goal of law ought to be *autonomy*, not well-being per se.<sup>46</sup> Well-being of individuals is relevant insofar as such well-being is able to advance autonomy of such individuals. However, Habermas notes that capitalist societies are organized in such a manner that only a few powerful people can decide how others are to be equally or unequally treated.<sup>47</sup> According to Habermas,

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<sup>43</sup>Devika et al., supra note 3, at 186.

<sup>44</sup>Pape (2016), supra note 2, at 200–201.

<sup>45</sup>See generally Blackett (2014), supra note 2.

<sup>46</sup>Habermas (1996).

<sup>47</sup>Ibid. at 420.

this decision-making power of the few generates ‘colonizing dependencies’ of people who are administered by law and bureaucratic regulation.<sup>48</sup> Habermas notes, colonial dependencies often originate in the ‘overgeneralized classifications’ used in law, which often leads to the actual disadvantage and marginalization of women workers and gender inequality in the society.<sup>49</sup> The intended gender-sensitive norms that often accept abstract and objectified *women’s problems* only benefit an advantaged section of women at the cost of other underprivileged women’s groups disadvantaged by class, caste, ethnicity, age, marital status, migration status, sexual orientation, and so forth.<sup>50</sup>

Within the existing regulatory standards, which is characterized by a patriarchal ‘*outmoded paradigmatic understanding of law*’, it is difficult if not impossible to strike gender equality between the sexes.<sup>51</sup> Law often focuses on the distinction between the genders rather than concerning itself with the disadvantages generated by such distinction.<sup>52</sup> However, Habermas notes, the colonizing dependencies perpetrated by law could also be overcome by means of law in order to promote autonomy of people generally and workers in particular.<sup>53</sup>

If law needs to be sensitive (and empathetic) to the concerns of women domestic workers, our fundamental assumptions need to be reworked. What is important here is to overcome gender stereotypes that have ‘normalizing effects’ on women’s exploitative work such as domestic work.<sup>54</sup> Gender stereotype and its normalizing effects could only be overcome when the law-making process mainstreams women workers’ lived experiences into the law-making process, which should also include other stakeholders in a dialogic exchange.<sup>55</sup>

The relation between gender and work regulation is a dynamic one; none of the perspectives—gender or work—can remain fixed, and therefore, law needs to remain in a continuous interactive equilibrium with both.<sup>56</sup> From this point of view, one of the central roles of law should be to redefine work in such a manner that gender difference becomes less and less relevant to work instead of seeking to assimilate women in a patriarchal framework.<sup>57</sup> The recognition of domestic work may be an important first step, but it does not suffice in striking an interactive equilibrium

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<sup>48</sup>Ibid. at 420.

<sup>49</sup>Ibid. at 422–423.

<sup>50</sup>Ibid. at 423.

<sup>51</sup>Ibid. at 423.

<sup>52</sup>Ibid. at 423. Such a legal cognizance of gender inequality on the basis of difference rather than ensuing disadvantages permeates Indian labour laws, for example, when such laws prohibit women workers from working at night for security concerns. Here, instead of securing the circumstances in which women workers can safely work at night, the state goes on to prohibiting women’s work altogether in keeping with patriarchal notions of differences between the sexes and their appropriate social conduct.

<sup>53</sup>Ibid. at 420.

<sup>54</sup>Ibid. at 423–424.

<sup>55</sup>Ibid. at 425–426.

<sup>56</sup>Ibid. at 424.

<sup>57</sup>Ibid. at 424.

between gender and work where work is redefined in a gender-sensitive manner. It is in this test that the ILO Convention 189 fails.

This gender–work equilibrium could be achieved by means of discursive public dialogue, wherein workers are able to question existing juridical framework and participate in both vertical (with employers, state, so forth) and horizontal (with co-workers, civil society, media, so forth) social dialogue process.<sup>58</sup> When workers are engaged in such a public discourse, not only does the law have a better possibility of success, workers themselves would own up responsibility for the success—or failure—of the law.<sup>59</sup> Thus, Habermas concludes:

[N]o regulation, however sensitive to context, can *adequately* concretize the equal right to an autonomous private life unless it simultaneously strengthens the position of women in the political public sphere and thereby augments participation in forms of political communication that provide the sole arenas in which citizens can clarify the relevant aspects that define equal status.<sup>60</sup>

Adhering closely to this Habermasian premise, Dorothy Smith notes that institutional discourses of legal and human rights ‘objectify’ people and their lived experiences.<sup>61</sup> On the other hand, institutional ethnography (IE) developed by Smith proposes that a legal policy will be effective and, therefore, useful only when such policy is constantly updated on the basis of people’s actual experiences of living their lives. People’s actual experiences are the basis of their future aspirations and it is these aspirations that law needs to cater to. ‘Learning from actualities means treating them as existing beyond what the researcher [or policy-maker] already knows ...’.<sup>62</sup>

IE seeks to understand social frameworks or ‘relations of ruling’ by means of the experiences of people. It does so by ‘recogni[zing] the centrality of gender as an organizing principle in all social systems, including *work ...*’.<sup>63</sup> The premise of IE is that social frameworks are developed by people in position of power, who have historically been men, to the exclusion of women.<sup>64</sup> In order to understand the nature of this exclusion, so the argument goes, women’s lived experiences need to be assessed in the backdrop of the power structure. In this respect, IE offers an alternative sociology rather than a research method.<sup>65</sup> Society is analysed from the standpoint of the people living in it. Several research methods could be employed to undertake institutional ethnography.

However, the focus of the research in the IE tradition is not the individual per se<sup>66</sup>; it is rather how an individual’s experiences goes on to constitute a individual standpoint-oriented (i.e. a perspective) social framework of ruling. The question

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<sup>58</sup>Ibid. at 425.

<sup>59</sup>Ibid. at 425–426.

<sup>60</sup>Ibid. at 426.

<sup>61</sup>Smith (2006), at 120.

<sup>62</sup>Ibid. at 57.

<sup>63</sup>Smith (2005) at ix [emphasis mine].

<sup>64</sup>Smith (2006), supra note 61, at xi.

<sup>65</sup>Ibid. at 57.

<sup>66</sup>Ibid. at 59, 61, 68.



then is, beginning from an individual premise, how the entire structure including the legal structure is made visible from the standpoint of the individual. By adopting this standpoint, it is also possible, therefore, to develop group-, community-, or society-based conceptual categories and normative goals on the basis of IE by carefully charting the ‘intersections’ and ‘complementarities’ of diverging experiences of members constituting these groups.<sup>67</sup>

Although experiences are often shaped by tradition and culture, which is predominantly paternalistic, IE is mindful of these social bases of knowledge and accounts for these prejudices in people’s experience.<sup>68</sup> For IE, social knowledge emanates from an individual’s complex experiences articulated by means of regular ordinary language-based communication.<sup>69</sup> It is no surprise then that IE emphasizes texts in its analytical domain, which does not only include written texts, but also includes spoken and otherwise represented texts including photographs.<sup>70</sup> It is, thus, an epistemology of society.<sup>71</sup> This epistemology, therefore, relies on people’s capacity, that is, their *autonomy* to tell their experiences insofar as they are relevant to legal policy-making.<sup>72</sup> People are the experts in this knowledge-generating process. If autonomy is what law is to promote, as per Habermas, it is reasonable that people’s autonomous articulations form the basis of law-making. IE delineates a comprehensive framework for taking account of such articulations for law-making purposes.

In the IE view of institutional structure, existing labour rights, particularly those expressed at an overarching level of generality are abstract ‘perspectiveless representations’.<sup>73</sup> Legally guaranteed rights often operate with the concept of disembodied workers who are separated from non-work requirements of their lives.<sup>74</sup> Institutional ethnographer Marjorie L. DeVault notes that by focusing on workers’ experiences, institutional ethnography is able to offer a generous concept of work that focuses on the notion of embodied worker, that is, the somewhat obvious notion that work cannot be understood in isolation from workers’ bodies in their overall social context.<sup>75</sup> Workers’ experience, then, constitutes the lens through which to understand the meaning of work, but one that does not essentialize the experiences of even similar groups of workers such as migrant or domestic workers.<sup>76</sup>

Thus, by focusing on workers’ experience, it is possible to bring erstwhile invisible work to the attention of law and policy documents, which contribute to shaping future conceptualizations of work and accordingly, are more attuned to understanding

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<sup>67</sup>Smith (2006), *supra* note 61

<sup>68</sup>For a more comprehensive argument against challenges posed to experience-based sociological knowledge, see *Ibid.*

<sup>69</sup>*Ibid.* at 78, 80–83, 87–95, 102, 124–135, 142–143.

<sup>70</sup>*Ibid.* at 102–105.

<sup>71</sup>Smith (2005), *supra* note 63 at xi.

<sup>72</sup>Smith (2006), *supra* note 61.

<sup>73</sup>*Ibid.*

<sup>74</sup>Solomon (2008) at 184.

<sup>75</sup>DeVault (2008) at 1, 2, 5–6; also see DeVault (2014).

<sup>76</sup>DeVault, *ibid.* at 5; also Smith (1987).

workers' aspirations.<sup>77</sup> Once experiences are mainstreamed, norms, institutions, and social ordering ought to be examined from the location of the marginalized workers, 'embodied in the local historicity and particularities of [their] lived worlds'.<sup>78</sup> While the ILO Convention on domestic workers succeeds in legal recognition of an erstwhile invisible work, it fails to shape future conceptualization of work on the basis of domestic workers' lived experiences.

This failure is evident from the way the ILO Convention conflates self-employment with employment relationship and subsumes the two in a market-based economic productivity framework. As the divergence of the work lives of domestic workers in India shows, it is short-sighted to merge problems and prospects of self-employment with employment relationship. It is also parochial to assume domestic workers in general as vulnerable and view their quasi-contractual employment relationship with unabridged suspicion without distinguishing the sites of vulnerability from the sites of power. The pluralism inherent in domestic work calls for a decentralized regulatory approach if workers' actual autonomy is to be facilitated. The ILO Convention could be pivotal as a branching off point for such decentralization.

## Conclusion

As we have seen, there is a remarkable diversity in the experiences of domestic workers even within the territory of one single jurisdiction, which in this case is India. Although hypothetically some legal safeguards under certain circumstances cover domestic workers, there is no legislative initiative that addresses the specific concerns of domestic workers in India. If the aim of legal policy is to promote aspirations of domestic workers, legal entitlements need to emerge out of the experiences of such workers. And since experiences of domestic workers are remarkably heterogeneous, legal policy-making needs to be decentralized in the context of domestic workers.

It is with reference to this heterogeneous context that the ILO Convention on domestic work appears limited in its reach at two levels. First, the Convention is limited in its capacity in taking account of embodied experiences of domestic workers in their given diversity and in allowing adequate representation of domestic workers in the law-making process. Second, the Convention subjects heterogeneous experiences of domestic workers to a unified market-based logic of economic productivity, thereby ignoring autonomous perspectives of domestic workers at their work.

However, it is important to situate the ILO Convention in its proper perspective. It would be incorrect to perceive the Convention as an all-inclusive solution to all problems of domestic workers. The Convention should, instead, be seen as an important component in the political struggle for the recognition of domestic work and the promotion of workers' autonomous aspirations. It is important to note that several international as well as domestic initiatives have been undertaken recognizing

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<sup>77</sup>DeVault, 'Mapping', *supra* note 75, at 787–788; Smith, *ibid.* at 160–161.

<sup>78</sup>Smith, *ibid.* 8, 108.

the value of domestic work and ensuring social protection for domestic (including migrant) workers after the promulgation of the ILO Convention.<sup>79</sup> These initiatives are instances of the continued politics involving domestic work and domestic workers, and this is where lies the significance of the ILO Convention. This politics needs to be fuelled by domestic workers' organized action. An immediate priority of such organized action by domestic workers in India ought to be forcing the ratification of ILO Convention 189.

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<sup>79</sup>Blackett (2012), supra note 2, at 781–782.

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# Chapter 5

## Workplace Sexual Harassment of Women Domestic Workers: Issues and Challenges in the Legal Framework in India



Ritu Gupta

### Introduction

*The right to be protected from sexual harassment and sexual assault is [o]ne of the pillars on which the very construct of gender justice stands.*<sup>1</sup>

Rape and sexual assault are the more commonly recognized forms of gender-based violence.<sup>2</sup> However, sexual harassment of women at workplace, despite not garnering enough attention and research, can be equally repressive and intimidating. Increased participation of women and their splendid achievements in almost every profession have triggered this undesirable imbalance at workplaces hitherto conventionally been occupied by men. In organized sector, a number of rules and regulations, though not adequate to curb the threat, are usually in place to be followed for redressal of any such grievance. The unorganized sector, however, is often outside the purview of such legal frameworks. According to a report published by International Labour Organization (ILO), the number of domestic workers in India was 4.2 million in 2004/05, representing 1% of total employment.<sup>3</sup> The great majority of domestic workers are women, and some 2.2% of all employed women are domestic workers.<sup>4</sup> Due to the peculiar nature of their work, domestic workers are vulnerable to both physical and mental abuse. This could also largely stem from the fact that many

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<sup>1</sup> Report of the Justice Verma Committee on Amendments to Criminal Law; Jan. 23, 2013; para 4, p. 2.

<sup>2</sup> It is only during last four decades that this problem has been discovered and identified. See MacKinnon (1979). The Indian Supreme Court for the first time recognized and defined sexual harassment at workplace in 1997 in *Vishaka v State of Rajasthan*, AIR 1997 SC 2011.

<sup>3</sup> ILO (2013).

<sup>4</sup> *ibid.*

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of them belong to marginalized sections of the society.<sup>5</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has been enacted with this view to ensure safe working environment to women at workplace including unorganized sector that encompasses domestic sector also.<sup>6</sup>

This chapter aims at providing a detailed analysis of the current situation regarding the issue of sexual harassment at the workplace with special reference to domestic workers in India. An attempt has been made to highlight the relevant but complex issues like definition of domestic workers, labour laws issues and employer–employee relationship. The position of Delhi-NCR with special reference to Gurugram has been briefly discussed as a special case study to highlight the lapses in execution of applicable legal framework. Further, the chapter seeks to provide certain suggestions that may offer possible guidance to the legislature, policy makers and the government, in formulation of future policies and/or guidelines to address the concern of workplace sexual harassment of domestic workers.

## The Historical Narrative and Problem Identification

The Indian Constitution provides for, inter alia, the fundamental right to equality and right to life that includes right to live with dignity.<sup>7</sup> It aims at eliminating every possible discrimination based on religion, caste or sex. Such constitutional commitments towards justice and equality find resonance in various planning processes, legislations, policies and programmes over the last seven decades. However, a situational analysis of socio-economic status of women in India, does not reflect satisfactory achievements in any of the important human development indicators. Apathy of the system, poor community-based protection mechanisms and rising graphs of crime against women are few of the foremost constraints in the path of emancipation of women in India. Over the centuries, generations of women across the world have suffered due to unwanted sexual attention and offensive behaviour at work, based on their gender.<sup>8</sup> Sexual harassment not only exhibits irreverence towards women's esteem, self-respect and dignity, but also violates their basic human rights.

The organized sectors represent those workplaces where the employment terms are fixed and regular and the employees get assured work. Numerous rules and regulations, though not adequate, are usually in place to be followed for redressal of issues like workplace sexual harassment. In contrast to this, the term unorganized sector when used in the Indian context is defined as:

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<sup>5</sup>ILO (2016).

<sup>6</sup>Preamble to the Sexual Harassment of Women (Prevention, Prohibition and Redressal) at Workplace Act, 2013.

<sup>7</sup>The 'Equality Code' of the Indian Constitution comprises of Articles 14–18 of Part-III and Articles 38, 39, 39-A, 41 and 46 of Part-IV.

<sup>8</sup>Siegel (2003, p. 3).

an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.<sup>9</sup>

After independence, the government has passed various labour legislations, for example, the Payment of Bonus Act, 1972, the Payment of Gratuity Act, 1972, the Maternity Benefits Act, 2017.<sup>10</sup> Nevertheless, these legislations have benefited only the workers of the organized sector, while 93% of the labour force fall in the unorganized sector.<sup>11</sup>

India has only two legislations that, in a roundabout way, construe domestic helps as workers: the Unorganized Workers' Social Security Act, 2008 (UWSSA) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. While the former is a social welfare scheme, the latter aims to protect the working women in general. However, neither of these recognize domestic helps as rights-bearing workers.<sup>12</sup>

Therefore, when it comes to the issue of sexual harassment at the workplace, women in the informal sector are in a much more disadvantageous position than those in the formal workforce.<sup>13</sup> This is compounded by the fact that women workers in the unorganized sector are often illiterate, poor and ignorant of the law, thereby making them vulnerable to mental and physical abuse and harassment.<sup>14</sup>

The vulnerability of women working in domestic sector to various forms of criminal and intimidating behaviour at the hands of employers is far more as compared to any other occupation or profession and their experiences remain largely invisible. Poverty is a curse and if you are a woman, poverty becomes even harder to swallow.<sup>15</sup> For decades, the poor condition of domestic workers has been a reality in India despite the fact that it is one of the oldest and important occupations for millions of women around the world. Domestic work constitutes one of the country's largest job categories, next only to farming and construction work.<sup>16</sup>

While no reliable statistics determine the number of workers in the sector, data analysis of the NSSO (67th round, 2011–12) Employment Unemployment Survey reveals an estimated 41.3 lakh domestic workers in the country, out of which 68% were women. However, there are massive discrepancies between the official and unofficial estimates, with the latter showing up to 9 crore domestic workers in total.<sup>17</sup>

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<sup>9</sup>Unorganised Workers' Social Security Act 2008.

<sup>10</sup>See Mathew (2003).

<sup>11</sup>WEIGO Law & Informality Project (2014).

<sup>12</sup>Supra note 4.

<sup>13</sup>Diwaker and Ahamad (2014).

<sup>14</sup>Women In The Informal Sector. <http://www.womensweb.in/2016/11/women-in-the-informal-sector-sexual-exploitation/>. Accessed 28 August 2018.

<sup>15</sup>The Beijing Declaration and Platform for Action, adopted by 189 Member States in 1995, reflects the urgency around women and poverty by making it the first of 12 critical areas of concern. <http://beijing20.unwomen.org/en/in-focus/poverty>. Accessed 25 May 2018.

<sup>16</sup>Bala (2009, p. 105).

<sup>17</sup>Sexual Harassment of Domestic Workers at their Workplace. [http://www.marthafarrellfoundation.org/uploaded\\_files/pdf\\_files/1529667465\\_First%20report.pdf](http://www.marthafarrellfoundation.org/uploaded_files/pdf_files/1529667465_First%20report.pdf). Accessed 20 May 2018.

As per another source, nearly 90% of domestic workers in India are women or children (especially girls), ranging from ages 12 to 75, and it is estimated that 25% amongst them are below the age of 14.<sup>18</sup>

These women domestic workers have been vulnerable to all types of abuses, be it physical, sexual or mental since they come from marginalized sector of the society and large number is of migrant workers.<sup>19</sup> The issue of sexual harassment at workplace for such women workers remains underreported. Data released by the Ministry of Women and Child Development in February 2014 published in response to a question tabled in the Upper House of Parliament track reports of violence against domestic workers between 2010 and 2012. Overall, in India's 28 states and 7 union territories, there were 3,564 cases of alleged violence against domestic workers reported in 2012, up slightly from 3,517 in 2011 and 3,422 in 2010.<sup>20</sup>

Not only in India, but across the globe, the conditions in which domestic workers work are seldom talked about or discussed. Their stories make headlines only in extreme cases of exploitation or abuse, while they continue to routinely face harassment on the job with little protection.

The situation of domestic workers is in fact no different even in the context of a developed economy like the US. After the Harvey Weinstein story that broke in October,<sup>21</sup> with more and more famous entertainers revealing their experiences of harassment and assault in professional settings, many perceive this moment to be a turning point for women's ability to speak out about sexual assault. However, the moment has not yet arrived for the large number of workers in the unorganized sector, where women continue to endure harassment, and assault that they dare not publicly share for fear of losing their job, or experiencing other forms of retaliation, including deportation. These women include the approximately two million domestic workers—nannies, housekeepers and caregivers—in the USA, who work and sometimes live inside the homes of their perpetrators.<sup>22</sup> To quit their job is not a solution for these domestic workers since that may be economically disastrous for their families.

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<sup>18</sup>Issues of domestic workers in India, National Domestic Workers' Movement. <http://www.ndwm.org/resources/Issues%20of%20Domestic%20workers%20in%20India.pdf>. Accessed 16 June 2018.

<sup>19</sup>Migrant Domestic Workers, UN Women (2016). <http://www.unwomen.org/en/digital-library/multimedia/2016/9/infographic-migrant-domestic-workers>. Accessed 10 April 2018.

<sup>20</sup>Rights for Domestic Workers, United Nations in India <http://in.one.un.org/page/rights-for-domestic-workers/>. Accessed 10 September 2018.

<sup>21</sup>New Accusers Expand Harvey Weinstein Sexual Assault Claims Back to '70s <https://www.nytimes.com/2017/10/30/us/harvey-weinstein-sexual-assault-allegations.html>. Accessed 10 September 2018.

<sup>22</sup>Working Like a Robot, This report, based on 87 interviews conducted in November 2016 and February 2017, including 50 Tanzanian domestic workers, documents the abuse women face in Oman and the United Arab Emirates (UAE). The report looks at how the Tanzanian, Omani and UAE governments' failure to protect Tanzanian migrant domestic workers leave them exposed to exploitation both at home and abroad. Also see #MeToo, Say Domestic Workers in the Middle East. <https://www.hrw.org/news/2017/12/08/metoo-say-domestic-workers-middle-east>. Accessed 10 November 2018.



Though most US states have enacted domestic workers' Bill of Rights<sup>23</sup> that include protection from sexual harassment, the inadequacy of such laws is often debated. There are similar cases of harassment being reported from various other parts of the world, the Middle East being one of the key regions where a significant number of cases of exploitation and abuse of migrant domestic workers occur.<sup>24</sup>

## **Sexual Harassment of Women Domestic Worker at Workplace and the Law in India**

Sexual harassment is the behaviour with a sexual connotation that is abusive, injurious and unwelcome. It places the victim in a state of intimidation, humiliation or hostility. It may be constituted by multiple actions or even by a single act and the intention of the harasser is not relevant. There is a whole range of behaviour and activity, which may not fall squarely within the definition but still may constitute or may amount to sexual harassment. It includes<sup>25</sup> any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- i. physical contact and advances; or
- ii. a deemed or request for sexual favours; or
- iii. making sexually coloured remarks; or
- iv. showing pornography; or
- v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The silence surrounding sexual harassment lies in the inability to give such acts a specific name since a popular misconception about sexual harassment is that it inevitably includes physical sexual contact at any time, place and in any context.<sup>26</sup> However, the conduct constituting sexual harassment encompasses a range of behaviours that may be physical, verbal or psychological. It may be subtle and include verbal innuendos and affectionate gestures that are inappropriate in the circumstances. Also, it may not be true always that every kind of sexual violation should involve visible proof or motivation. At times, it is even difficult for the victim/survivor of sexual harassment to articulate the experience that she has undergone and often finds herself being blamed for inviting such harassment unto herself. It's been rightly said that women in India suffer on two counts—first, because the society as a whole is depraved, and second, because they are women.<sup>27</sup> Working women, across all age

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<sup>23</sup>New York's Domestic Workers Bill of Rights, 2010; Illinois Domestic Workers' Bill of Rights, 2016; Oregon's Domestic Workers Bill of Rights, 2015 etc.

<sup>24</sup>Infra note 25 (Working Like a Robot).

<sup>25</sup>Section 2(n), The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013).

<sup>26</sup>Anand (2008).

<sup>27</sup>Shiva Kumar (1996).

groups, social strata or class, are equally vulnerable and may become victim to such inappropriate sexual conduct.

As mentioned earlier, usually there is a well-defined course of conduct in place in organized sector and in case of any dispute at the workplace, some internal redressal mechanism exists in addition to the applicable legal framework, e.g. CCS (CCA) Rules for central government employees<sup>28</sup> along with Section 354A Indian Penal Code, 1960. Even then, there have been incidents being reported in the media and cases filed in courts almost on a daily basis.<sup>29</sup>

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has been enacted sixteen years after the Supreme Court laid down guidelines in the *Vishaka* judgement<sup>30</sup> with a view to ensure safe working environment to women at workplace. The provisions of the act apply to all workplaces—public, private, organized or unorganized—and seek to prevent and redress sexual harassment faced by women at workplaces. Thus, this act provides safety cover to all working women including those in unorganized sector that further encompasses domestic sector. It mandates that no woman shall be subjected to sexual harassment at workplace.<sup>31</sup> It not only prohibits preferential and detrimental treatment in employment but also covers implied or overt threat about the present or future employment status, *quid pro quo* and hostile work environment and every kind of humiliating conduct causing health and safety problems. This part details those circumstances which may in addition to the other circumstances amount to sexual harassment and violate the dignity of working woman.

The Act, further, requires an employer to set up an Internal Complaints Committee (ICC) at each office or branch having more than 10 employees of any gender.<sup>32</sup> The use of word 'shall' makes it mandatory and obligatory for the employer to form such a committee. The Delhi High Court recently ordered the ICC to strictly adhere to the principles of natural justice while conducting inquiry.<sup>33</sup>

The Act provides for monitoring and implementation of the provisions of the Act through the intervention of a District Officer (DO) to be appointed by the appropriate government.<sup>34</sup>

The DO is in turn required to set up a Local Complaints Committees (LCCs) at the district level to investigate complaints regarding sexual harassment from establishments where either the ICC has not been constituted on account of the establishment

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<sup>28</sup>CCS (CCA) Rules 1965, Department of Personnel and Training (DoPT), Union Government, <https://dopt.gov.in/ccs-cca-rules-1965>. Accessed 15 November 2018.

<sup>29</sup>*Mrs. Rupan Deol Bajaj v KPS Gill* AIR 1996 SC 309; Tarun Tejpal (Tehelka fame); R K Pachauri (TERI) are few of the high-profile cases reported in media.

<sup>30</sup>*Vishaka v State of Rajasthan*, AIR 1997 SC 3011; (1997) 6 SCC 241; JT (1997) SC 384.

<sup>31</sup>Section 3, The Sexual Harassment of Women at Workplace Act, 2013.

<sup>32</sup>Section 4, *ibid*.

<sup>33</sup>*Ashok Kumar Singh v University of Delhi*; LPA 350/2017 & CM No. 15732/2017; D.O.D. Aug. 08, 2017; Geeta Mittal and Anu Malhotra JJ.

<sup>34</sup>Section 5, The Sexual Harassment of Women at Workplace Act, 2013.

having less than 10 employees or if the complaint is against the employer.<sup>35</sup> This is actually the provision that in majority of the cases would be applicable to the women working in domestic sector.

Also, the DO shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area, and ward or municipality in the urban area. Nodal officer shall receive the complain and forward the same to the concerned LCC within a period of seven days. The DO will also monitor the timely submission of reports furnished by the LCCs and take measures as may be necessary for engaging NGOs in creating awareness about sexual harassment and the rights of women.

In the quest of justice, women in the Delhi-NCR region, for instance, can approach the Delhi State Legal Services Authority (DSLISA) or Haryana State Legal Services Authority (HALSA) (in Gurugram). She can visit the DLSA front office at the court and share her problem. Before approaching DLSA, it is not necessary for her to have filed an FIR. In case of having filed an FIR, she may need a lawyer, but if she cannot afford one, then she can be provided with a lawyer.

In certain situations, the woman may have a complaint but does not want to go to the police. She may just want to immediately approach the court for protection. The concerned persons at DLSA will forward her request to the court. She can give her complaint in writing. In case she is unable to do so, the DLSA will have volunteers and lawyers who will help her write the complaint. They are also required to make the complainant aware of her legal rights and options.

### *The Role of LCC*

Members of the LCC will include a chairperson, to be nominated from amongst eminent women in the field of social work and committed to the cause of women. There will be one member from amongst the women working in municipality in the district; two members, of whom at least one shall be woman, to be nominated from amongst such NGOs or associations as are committed to the cause of women, or a person familiar with the issues related to the protection of women from sexual harassment.<sup>36</sup> At least one of the members shall be a woman belonging to the SC/ST/OBC or minority community notified by the central government from time to time.<sup>37</sup> Also, an officer dealing with women and child development in the district shall be an *ex officio* member.

Annual reports containing information pertaining to the number of cases filed, if any, and their disposal are to be submitted by ICCs and LCCs to the DO, who in turn forwards them to the state government, which is required to monitor the implementation of this Act, carry out inspections and maintain data.

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<sup>35</sup>Section 6, *ibid*.

<sup>36</sup>Section 7, *ibid*.

<sup>37</sup>Second Proviso to Section 7(1).

Thus, appointment of DOs is essential for proper monitoring and implementation of the Act.<sup>38</sup> This is what the law prescribes, and the governments of respective states are responsible to implement these provisions of the 2013 legislation.

### *Lessons from Delhi-NCR*

In a survey conducted with 291 domestic workers in Gurugram, Faridabad and South Delhi in June 2018, it was found that over 29% of women domestic workers reported sexual harassment at work.<sup>39</sup> Around 61.8% cited sexual harassment like lewd gestures and whistling. Sending SMSs or Whatsapp messages with sexual innuendo/content was cited by 52% of the respondents.

According to another survey conducted by Martha Farrell Foundation in collaboration with PRIA, of the 11 districts in Delhi, only two have formed the LCCs.<sup>40</sup> The research found that over 29% of women domestic workers have been sexually harassed at work. Of those who did experience sexual harassment, 20% complained to the police but there was no outcome. Around 19% ignored the incident completely, while 15% spoke only to their friends about it. Only one person reported the incident to their employer. The study also revealed that redressal mechanisms are missing in a majority of districts in the national capital.

In 2016, the Delhi government had proposed setting up LCCs in every district of the city. However, the enforcement mechanism is hardly in place. The Delhi Commission for Women (DCW) Chairperson, Swati Maliwal, had also expressed concern over the fact that even after two years of the passage of the Act, the DOs and LCCs have not been notified in the city. She had even written to the then Delhi Lieutenant Governor Najeeb Jung about it.<sup>41</sup> It was only in February 2016 that Department of Women and Child Development ordered the District Magistrate (DM) to be nominated as DO in exercise of power conferred under Section 5 in NCT of Delhi.<sup>42</sup> Further an LCC has been constituted on 29 November 2016 in Gurugram.<sup>43</sup>

The Gurugram administration constituted an LCC in December 2015. This committee, inter alia, will ensure that the organizations in the area including factories,

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<sup>38</sup>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

<sup>39</sup>Over 29% Domestic Workers Reported Sexual Harassment at Work: Survey <https://m.dailyhunt.in/news/india/english/the+wire+english-epaper-wireng/over+29+domestic+workers+reported+sexual+harassment+at+work+survey-newsid-96680481>. Accessed 15 November 2018.

<sup>40</sup>Martha Farrell Foundation (2018, p. 7).

<sup>41</sup>Delhi govt proposes setting up 'Local Complaints Committee' to help those facing sexual harassment. <http://www.firstpost.com/india/delhi-govt-proposes-setting-up-local-complaints-committee-to-help-those-facing-sexual-harassment-2605374.html>. Accessed 10 October 2018.

<sup>42</sup>Govt. of National Capital Territory of Delhi, Office of the District Magistrate (South). <http://it.delhigovt.nic.in/writereaddata/Odr201645260.pdf>. Accessed 17 November 2018.

<sup>43</sup>Ibid.

educational institutions and offices have ICCs to respond to the complaints of sexual harassment.<sup>44</sup>

In February 2017, the Gurugram DO had sent notices to over 4,000 organizations, including offices and educational institutes, to form an ICC and take measures for curbing sexual harassment of working women. Following this, an annual report on ICC's initiative, if any cases were reported, was to be submitted to district officer by 31 March. If any organization does not comply with this, the DO will take appropriate action, which includes fine and cancellation of its licence. However, the said provision appears to be there on paper only.

These strict rules had little effect on Gurugram-based companies and institutions. Out of over 4,500 companies and organizations across Gurugram, only around 1,200 submitted the report from their ICC on sexual harassment at workplace by 31 March. Out of these, only around 250 have managed to submit a complete report as per the mandate. LCC, which was constituted as a single-window platform to provide justice to working women in Gurugram, has also not been able to emerge as an effective redressal mechanism. Despite being functional for over two years now, the committee has managed to register only eight cases of sexual harassment.<sup>45</sup> Though large numbers of complaints pertaining to physical or sexual harassment cases came to light, victims hesitated to peruse criminal proceeding in police stations.<sup>46</sup>

Notably, a lot of companies had in past few months even tried to submit fake information, following which additional deputy commissioner had asked the LCC to release a new form in December 2016. The new format requires the companies to give more details and also to attach evidentiary documents along with the form. However, the forms are often submitted incomplete and the mandate set up by the DO is not fulfilled.<sup>47</sup>

## The Way Forward

Domestic workers, just like any other worker, have the right to fair working conditions.<sup>48</sup> Recent cases in media speak volumes about the work required to be done in this area. Nationally, according to the National Crime Records Bureau (NCRB), a mere 24% of crimes like molestation and sexual harassment against women resulted in convictions in 2015.<sup>49</sup> If this is what statistics convey regarding the general female population, situation would be far worse with specific reference to domestic workers though no reliable statistics are available. Domestic workers are an integral part of urban society, but only a marginal percentage have formal contracts, rights or ben-

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<sup>44</sup>Sachdeva (2015).

<sup>45</sup>Kumar (2016).

<sup>46</sup>Ibid.

<sup>47</sup>Choudhry (2017).

<sup>48</sup>Grande.

<sup>49</sup>Yadav (2017).

efits. Conventional policy tools often ignore them as they are not in the forefront of the formal workforce. The extremely invisible and privatized nature of domestic work also makes domestic workers vulnerable to sexual harassment at workplace.<sup>50</sup>

There cannot be effective monitoring of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the absence of notified DOs. The employers have nothing to worry about in case of non-compliance and thus various workplaces continue to have no ICCs. Very few LCCs have been set up in districts as mandated by the Act. A bench headed by Chief Justice Dipak Misra asked the central and state governments to respond to the PIL by NGO Initiatives for Inclusion Foundation, which sought implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013. Till 2017, four years since Parliament passed the Bill, the entire structure that has to operationalize it remains non-functional.<sup>51</sup>

Consequently, there may not be any maintenance of data on number of cases filed and disposed, which ultimately affects the implementation as well as monitoring of the Act by the state government. Moreover, the aggrieved woman is left with no option but to approach the police station for criminal prosecution, leaving the Act redundant.

The announcement by Minister for Women and Child Development Ms. Maneka Gandhi in July 2017 about launch of an e-platform 'SHe-box', which will enable women employees of the central government to file complaints of sexual harassment at the workplace, is indeed laudable.<sup>52</sup> The portal was launched in July 2017 for women working in central government offices. Now it can be accessed by all women who are part of workforce in organized sector across the country. But again, with special reference to domestic sector, different challenges exist that act as restraints to such positive actions as far as their implementation is concerned. Special training and awareness would be required so that even women domestic workers can have access to this platform, since most of them are either illiterate or have little or no access to digital platforms. Therefore, the digital remedies being made available would hardly be of any use to them till they are properly skilled to make use of them.

Having a clear policy to deal with the problem can be an effective preventive measure as it enables women to complain. The most effective way to encourage reporting of incidents of sexual harassment is to introduce a range of different measures, since this approach has been shown to result in aggrieved individuals being more confident that their employer will respond to their plight.<sup>53</sup> Moreover, it must be recognized that victims/survivors of sexual harassment may lose self-confidence, feel undervalued, suffer from stress and anxiety, and as a result become demotivated

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<sup>50</sup>Infra note 51.

<sup>51</sup>Supreme Court pulls up Centre, states over women's sexual harassment at work <http://www.newindianexpress.com/nation/2018/jan/04/supreme-court-pulls-up-centre-states-over-womens-sexual-harassment-at-work-1744559.html>. Accessed 16 August 2018.

<sup>52</sup>The Indian Express (2017).

<sup>53</sup>Rowe (1996), DuBois et al. (1999).

or even negligent at work. An effective rehabilitation programme must be at place so that there is no psycho-social alienation of the victims/survivors.

### ***Regulation of Placement Agencies***

Absence of mechanisms to regulate the role of placement agencies is one of the most crucial impediments in the way of realizing the rights of domestic workers in India. Number of cases have come to light in the recent past that document the nefarious practices of placement agencies and the role they play in trafficking young women and children, and pushing them into domestic work. In the absence of any regulatory framework that monitors the activities of placement agencies, domestic workers often find themselves placed in workplaces where they have no access to decent working conditions and are treated as ‘slaves’.<sup>54</sup> Not extending equal protection of labour laws to domestic workers constitute unjustifiable discrimination as prohibited under various international instruments like International Covenant on Civil and Political Rights (ICCPR), Convention on Elimination of all forms of Discrimination against Women (CEDAW) and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families popularly known as Migrant Workers Convention.<sup>55</sup> All these instruments prohibit discrimination on basis of sex, language and social origin. Regulation of placement agencies would be an important step towards realizing the framework of social justice laid out by these international instruments.

It is also important to create awareness and disseminate information on the existing laws and regulatory frameworks so that domestic workers themselves are conscious of their rights. Regular monthly training programmes should be organized for the same with the help of local government officers and NGOs. Trade unions may come to play a significant role in this context. Measures must be taken to raise awareness amongst domestic workers on the need to organize and create support bases that could become a significant source of strength for their struggle.

Moreover, absence of an adequate knowledge base in the form of data and evidence have also made effective implementation of the legal mechanisms for domestic workers difficult. It is, therefore, desirable that efforts are made to build a comprehensive data set that would make it possible to argue for the case of domestic workers more effectively. Social media platforms could become a significant tool in this context helping to mobilise support and also to disseminate information. The Resident Welfare Associations (RWAs) may also be empowered to address the issue of sexual harassment at the workplace. It is important to recognize that RWAs have a significant role to play in bringing forth the experiences of domestic workers given the private and often isolated nature of their work. The following points may be well

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<sup>54</sup>Need for Legislation regulating placement/employment agencies [http://ncw.nic.in/PDFFiles/NEED\\_FOR\\_LEGISLATION\\_REGULATING\\_PLACEMENT.pdf](http://ncw.nic.in/PDFFiles/NEED_FOR_LEGISLATION_REGULATING_PLACEMENT.pdf). Accessed 15 June 2017.

<sup>55</sup>Ibid.

taken care of while drafting such policies so as to convince the employers that having such policies is beneficial to all the stakeholders.

- a. To implement and enhance equal employment opportunities and highlight their commitment in this regard.
- b. To support the household economy that is often dependent on the work done by the domestic workers thus enabling the other members of the family, particularly women to engage in productive employment outside.
- c. Having good employment practices in place would lead to more productive engagements by the workers.
- d. To safeguard themselves against future expensive, stressful and time-consuming legal actions that may arise by resorting to inhuman, illegal or unfair practices.

Effective dissemination of such policies, as stated above, is required. If dissemination of information is not there, the potential perpetrators may not realize the inappropriateness of their conduct and the possible consequences of the said behaviour.

Therefore, the courts, jurist, academicians, legal commentators and various bodies worldwide have laid great stress on the requirement of effective dissemination of the sexual harassment policies as merely having a policy on sexual harassment is not sufficient.

This has been realized that preventive or curative mechanisms have, generally, an edge over legislation which is mainly punitive in nature. Throughout the world, governments, employers'/workers' organizations and NGOs' are increasingly advocating that sexual harassment be addressed through workplace policies and complaints procedures. This trend reflects the recognition that workplace policies can be the most effective tool for preventing sexual harassment. Rather than being confined to responding to sexual harassment, their main role is to ensure that it does not take place.<sup>56</sup>

The Supreme Court of India had clearly underlined the need for employers to take all necessary steps to combat this problem when it had held that it shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.<sup>57</sup> The Supreme Court directed further, "Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment". Such directions of the Honourable Court are all more relevant to domestic sector.

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<sup>56</sup>Rubinstein

<sup>57</sup>Vishaka v. UOI AIR 1997 SC 3011.



## Legislative Framework

The statistics, reports and surveys should not be treated merely as numbers. Rather, every incident must be taken seriously. Recently, few state governments have taken different initiatives such as including domestic workers under minimum wage notification. But in the absence of a central legislation capable of reaching all domestic workers, none of these state-level measures can really benefit the domestic workers. Improvement in the economic situation would surely bring in the requisite empowerment and the courage to raise voices against the workplace harassment as well as other violence. Following are few of the suggestions that must be considered by the governments for effective redressal of this issue of sexual harassment:

- Domestic workers must be encouraged to form trade unions and register them so that they can engage with the existing labour law protections in the country.
- Mechanism for effective prosecution and punishment of perpetrators should be in place. These precedents would act as deterrence for others.
- Domestic work should also be integrated into broader policies aimed at reducing informal work.
- India should ratify the ILO Domestic Workers Convention No. 189 that guarantees the fundamental rights of domestic workers to decent and secure work which would bring about a complete transformation in the lives of domestic workers.<sup>58</sup>
- There should be greater governmental support towards voluntary organizations working for the cause of domestic workers.
- The government's laudable initiatives like vocational courses and skill development programmes would go a long way in ameliorating the poor conditions of these workers who more often than not are illiterate or unskilled. Lack of skill development avenues is one of the most important factors that force them to continue despite this sort of violence against them.

Ultimately, it must be recognized that a comprehensive legislation is one of the most desirable way forward towards realizing the rights of domestic workers in India. The comprehensive legislation may provide for an organic link to a comprehensive national action plan or strategy that may work wonders.<sup>59</sup> Further, a specific budget may be mandated for its implementation.

Only a central law can meet the requirements of regulating this sector since the workers also frequently cross interstate boundaries. The nearest law in the statute book, namely the Inter-State Migrant Workers Act, has proved hopelessly inadequate to counter this situation.<sup>60</sup> The training of all relevant officials is required that must include sensitization towards the plight of these workers. The need of the hour is to go beyond the rhetoric of women empowerment and to initiate concrete measures to counter the challenges faced by women at the workplace.

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<sup>58</sup>United Nations of India.

<sup>59</sup>United Nations.

<sup>60</sup>Supra note 12.

## Conclusion

No society can survive without the massive contribution that domestic work makes to national income. Yet it remains largely invisible and undervalued, a reflection of the low value India places on social reproduction.<sup>61</sup>

“Legislation may not be the best means to control a problem which is one of society; [w]hat is important is to bring about a change in mentality, as many women trade unionists have often pointed out... efforts should be made to identify measures that would help to change behaviour and attitudes, and thus prevent sexual harassment.” Federation of Austrian Industry (1992, p. 238).

It has become increasingly apparent over recent decades that legislative measures for combating sexual harassment need to be accompanied by preventive mechanisms introduced at the work place level.<sup>62</sup>

Providing a dignified life to domestic workers is possible.<sup>63</sup> The employers should protect the employee to the extent possible against aggression and violence and their detrimental effects; aggression and violence being acts by which the employee is psychologically or physically harassed, threatened or attacked, in circumstances that are directly related to employment.<sup>64</sup>

Thus, though the Sexual Harassment Act, 2013 has been brought and applied, may be well intentioned, we certainly have a long way to go as far as implementation is concerned generally and with reference to domestic sector specifically. Looking at ways to improve the current coverage, there is no single protection model that works best for domestic workers everywhere. But mandatory coverage (instead of voluntary coverage) is a crucial element for achieving adequate and effective coverage under any system.<sup>65</sup>

Once the effective mechanism is in place and the stakeholders are sensitized towards the issue, the desirable goals may be achieved and the restraints to enjoyment of the basic human rights of domestic women workers due to sexual harassment may be removed. The 2017 theme for International Women’s Day, i.e. 8 March, also focused on ‘Women in the Changing World of Work: Planet 50–50 by 2030’. Restoring the dignity of domestic sector working women by curbing the menace of sexual harassment would be a giant leap in achieving this theme of United Nations.

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<sup>61</sup> *Infra* note 65.

<sup>62</sup> Haspels et al. (2001, p. 109).

<sup>63</sup> *Supra* note 17.

<sup>64</sup> Ministry of Social Affairs and Employment, Netherlands (1992, p. 256); unofficial English translation from the Dutch text.

<sup>65</sup> *Supra* note 59.

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# Chapter 6

## Caste as a Framework to Study Domestic Labour: A Comparative Law Perspective



Sameena Dalwai

### Introduction

This chapter aims to find the connection between caste and domestic labour within a legal purview: not only do they both exist in the sphere of social normativity and are under-represented in law but also caste norms, entitlements and labour relations inform and influence the domestic labour situation in India. The chapter is divided into three parts: the first part on ‘Caste and Labour Narratives’ highlights the everyday instances of caste relations by employing a narrative style. The part on ‘Theoretical Underpinnings’ expounds on the concept of ‘caste as extraction of labour’, use of free labour as an upper-caste entitlement that has continued into the market and urban sphere. The third part reviews how this social, economic reality gets reflected in law. For this purpose, the author shall visit the Indian case law and consider how law has dealt with domestic labour—the type of cases where legal intervention is sought and the criteria upon which the judgements are based. This will be compared with the UK Employment Tribunal Judgement in 2014 that, for the first time, considered ‘caste’ as ‘ethnicity’ under the Equality Act 2010 and decreed that ill-treatment of the domestic worker was due to her caste status.

### Caste and Labour Narratives

This part foregrounds and introduces the subject of this chapter by employing a narrative style—three short real-life narratives are presented here. While the first narrative speaks of how rural caste relations continue into the modern, urban settings,

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the next two narratives relate to the ways in which labour is extracted and devalued due to the influence of caste normativity on to the modern labour relations.

### Narrative 1

*I was at a friend's wedding in Hyderabad. Amidst the food and frolic, sarees and jewelry, I noticed a young teenage girl on the periphery of the celebrations. She was neatly dressed, yet looked poor. She was not a child- as she did not run around with other kids. She was not a guest- she did not sprawl on the sofas or picked up sweets randomly. She was not a family member, nor working for the family- she did not move with a busy sense of purpose. Who is this girl? I asked. I was told she has come to help in the wedding. 'you see it is a tradition in our village that the Golla (Shepherd) community send one of their members to assist in celebrations like weddings, births in the homes of Reddy landlords. Since no adult was available, this girl was sent. She goes to school otherwise, to 7<sup>th</sup> standard.' An archaic caste practice had turned a school going girl into a domestic worker for the weekend.*

What is the girl's legal status during this period? In what capacity was she attending the wedding? Worker, relative, guest, 'servant'? Her position and status are uncertain as it is neither contracted, nor formal or charted out. It is in this obscure location—this uncharted, not formalized territory—that domestic labour and caste interact with each other in India.

One wonders why this dated practice should continue when clearly the wedding preparation in Hyderabad—managed by contractors, decorators and caterers—hardly required free labour from the Gollas?<sup>1</sup> The reasons: firstly, it reiterates the higher-caste privilege of extraction of free labour from the marked lower-caste families or clans within the village. Though living in the city, the ties with the village are strong. In fact, even though many a times the landholdings and ancestral property in the village allow the purchase of dwellings in the city despite hyper-urbanization in India, the city is not really distant from the village; especially for those whose urban lifestyle is made possible by the entitlements in the rural areas.

In fact, the urban habitats create a hierarchy that absorbs the rural immigrants according to their caste positionality. In the 'geographies of caste', the physical space is ordered and divided; a village square, walled town, rivers and water sources are all accessed according to the hierarchy of caste groups. In this scheme, the Dalit is the most disenfranchised outsider.<sup>2</sup> Within the tall city dwellings, those who live in the flats on the upper stories, those who live in the tiny watchman rooms on the ground floor with their families and those who live outside of the buildings in hutments or on the streets are divided not just by class but also by caste positionality.

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<sup>1</sup>The girl was, in fact, treated kindly and was offered sweets to take home. Yet, the sudden change of her circumstances—pulling her away from her habitat and hoisting her into an unfamiliar zone—tells her this is your lot, thus far your aspirations can run, even if you return to school on Monday.

<sup>2</sup>See Wankhede (2014).

Secondly, oppressive caste practices, similar to gender codes,<sup>3</sup> continue in the name of tradition or culture. Once you call it ‘our culture’ instead of a caste practice, it ceases to be galling. Hence, patriarchy and caste both survive and thrive in the urban, modern, even ‘global’ India under the benign auspice of being ‘culture’.

## Narrative 2

*My uncles were building a bore well next to our house in the native town. Whole day workers and equipment were busy. After the truck and workers moved, there were still two men hanging around, helping my uncles clean up the mess. They were our agricultural tenants—who were tilling some of our land and paying us 50% of the crops for it. They were called upon when we needed extra hand on our other lands or at home. They were not paid in cash for any of this extra work.*

## Narrative 3

*We visited a friend’s home in Pune. We had travelled several hundred kilometers and the car was filthy. The next morning the boy who washed the family car came to take the key to their car. Aunty told him, one more car is to be washed today. The boy asked for extra money. Aunty was furious, ‘one day we ask for extra work, you ask for money? These are our guests, you want to insult us like this?’ No one asked why extra money for extra work would be an unfair demand.*

In all the three stories above, the demand for a ‘little extra labour’ stems from the underlying assumption of natural right over free use of labour. In the borewell example, it can be noted that in the rural economy, cash flow or transactions are limited. However, a massive share of crops—nearly fifty per cent—is given for use of land for tilling. In a system where upper castes own most of the land, whereas lower castes supply the labour, upper castes can earn the same share of a crop sitting at home that the lower-caste person does by toiling in the sun. Labour is thus devalued, and the extra labour can go uncomputed and not be paid for. Hence, in the above narrative, the labourers did not seek monetary returns and none were offered.

In Narrative 3, the distance from obligatory village relationships allowed the labourer to seek cash in return for work and the extra work. The response is the same—outrage at the demand for extra money for extra labour.

While the above narratives come from the author’s personal repository, Dalit literature, including autobiographies, poetry and fiction, abounds with similar anecdotes where the lowest castes are perceived and treated as the ‘beasts of burden’.<sup>4</sup>

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<sup>3</sup>In each new phase of progress and achievements of Indian women, there has been corresponding catching up of patriarchal value system—the terminology employed is of culture and nation, as the Indian national and cultural history is articulated in deeply gendered terms. See Partha Chatterjee on how early Nationalism saw spiritual essence of the Nation as rooted in the domestic sphere and the women thereof Chatterjee (1997) or Rajagopal (2001).

Or Smitha Radhakrishnan’s ethnography of IT professionals that shows how new brand of ‘global Indians’ follow and stress upon the domestic gender roles wherein professional women prioritize being housewives in the name of Indian culture. Radhakrishnan (2008).

<sup>4</sup>Beasts of Burden by Imayam is a Tamil fiction that narrates the story of a washerwoman, Arokkyam and of the struggles of a Dalit community; Omprakash Valmiki’s autobiography in Hindi titled Jhoothan, tells an incident where the author was physically dragged to work in the fields by an upper-caste landlord despite having the tenth standard final exams next day.

The labouring castes<sup>5</sup> within the villages are always putting extra labour into the yards, homes and festivals of the upper castes—while this is celebrated in the name of ‘village unity’ (*‘sub koi mil jul ke rehte hai’*) to be contrasted with the cities (where ‘you don’t know your neighbours’), the reverse is hardly true—no upper caste is seen ‘helping out’ a lower caste to build houses and wells. Instead upper castes may offer money on occasional needs such as festivals, marriage and death. Yet, there is no way of keeping a tab on whether the extra labour equals this extra money. Since money is computable and is always counted, the giver knows how much money was given. On the other hand, labour is immeasurable in the same way and so remains unaccounted. Further, giving money is considered and expected to be acknowledged as an act of benevolence, whereas giving labour is an act of obligation/duty. Thus, the money giver always has an upper hand in the social relations than the labour giver, and despite offering a lot of extra labour, the lower castes must remain in the debts and obligation of the upper caste.

The association of caste and labour that is characterized by privilege/obligation can be seen as replicating in the sphere of domestic work, where the extra work for guests, parties and children is expected without the extra payments or consultation with workers about their willingness to offer extra services. Domestic workers, in many cases, are offered extra payments on festivals, possibly a saree or a bonus on Diwali. Yet the *modus operandi* is informal. Hence, there is no way of computing equity of services offered and payments made.

Drawing from the narratives above, the author argues that the sense of entitlement that the upper caste has over the lower caste is similar to what employers feel towards their domestic labour in India. Further, the caste normativity with its incumbent privilege, entitlement, obligation and humiliation that orders the everyday Indian life, tends to guide the relationship between domestic labour and their employers. From the background formed by narratives in the first part, the author will situate the experiential knowledge within theoretical underpinnings in the next part.

## Theoretical Underpinnings

Theorists of caste have considered how caste system orders relations of production, labour and surplus within the Hindu social order. Phule in his seminal book on slavery, speaks of caste as a religious social hegemony for the economic exploitation of the labouring masses<sup>6</sup>. In his equally famous work, *Cultivator’s Whipcord*<sup>7</sup>, he lists out festivals, life cycle events in which through the use of rituals and superstitions, the Bramhin seeks to extract grains, cows, clothes and sweets from peasants already

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<sup>5</sup>Caste system is a pre-ordained occupational ladder, in which each caste group follows their hereditary occupation. The labouring castes are those whose job is to provide manual labour, skilled jobs, crafts.

<sup>6</sup>Phule (1873).

<sup>7</sup>This is title of the work’s English translation. Original is Phule (1881).



burdened by the destructive colonial agricultural policies. The system of extracting surplus was based on the superior worth of the Brahmins in the ritual hierarchy and the low worth of manual, productive labour as well as the fear of religious wrath (Deshpande 2002).

The lowest castes are permanently shackled to dirty, hazardous work and are therefore considered filthy. Their labour thus strips them of their human dignity. Ambedkar spent considerable political energy in efforts to restore dignity and respect to the Untouchables. For this purpose, he advocated quitting of defiling labour activities.

Contemporary thinkers speak of how caste system gives prestige to those who do not work. Chakravarti (2006) points to the monopoly of sacred knowledge in the hands of Brahmins and barring of knowledge to the lower castes. In fact, it was the lower caste who laboured, developed and preserved the knowledge of agriculture, carpentry, fishing and hunting, of spatial skills like navigation and boat craft, of materials like metal, clay and wood—that made all productive activities and the existence of life possible. Yet this very knowledge and skills very denigrated inferior and polluting, compared to the ritual, intellectual activities of the upper caste. This way the caste system created not only a hierarchy of labour—intellectual labour on top, manual at the bottom—but also a hierarchy of comparable worth of groups performing different kinds of labour.

Kancha Illiah says that a single poetic stanza sets out the philosophy of Hinduism regarding labour and its surplus: “*Karmanye vadhikaraste ma phaleshu kadachan*”, which means you have a right to work but not to its fruits. Where will the fruits of this labour go? The Hindu system established a network of institutions to syphon off the fruits of people’s work into Hindu families who treat the work as mean and dirty. Kancha Illiah states that Dalit Bahujans share a culture of work and song whereas upper castes follow a culture of learning and worship. He writes, “The Savarnas were alienated from the work and by keeping Bahujan away from learning, they ensured that our culture never entered the printed pages. Gradually our work-culture was depicted as mean and vulgar while theirs was sacred” (Illiah 1996: 183). Not to state that Bahujans always accepted this and defined their own work as only fraught with indignity. Thakur (2008) through her ethnography of agri-community of north-west of Maharashtra shows that the OBC social ethos offers a different model than that of the Dalit model. In this Bahujan set-up, a person’s value comes from his/her capacity and willingness to labour in the fields, homes and other productive sectors. The work culture revolves around the joy and pride in hard physical labour—where industrious hardworking people are revered and non-working people are seen as lazy and burdensome.

Feminist thinkers have pushed this framework to include intersection of gender and caste to understand the exploitation of the lower-caste women, who are expected to provide not only manual but also sexual labour within the caste economies. Rege (1996) looks at the lyrics of Lavani, written by Brahmin men, which were sung and danced by women of Kolhati and other untouchable communities during the Peshawa period, and states that the sexuality of the lower-caste women is appropriated for the pleasure/desire of Brahmin men within the hegemonic cultural discourse. Anupama Rao sees caste as the effect of sexual regulation within and between caste com-

munities. Caste privilege is equated with the availability of lower-caste women as upper-caste property. While formal circuit of sexuality is of marriage and respectability, the informal circuit of sexual liaisons—of desire, pleasure and violation—gives upper-caste men the right to enjoy Dalit and lower-caste women. The knowledge of this is a public secret, normalized as a privilege by the upper castes and experienced as a shameful secret by its victims (Rao 2009: 235). A report on violence against Dalit women by the National Campaign on Dalit Human Rights features interviews that show that the societal expectation that Dalit women must be sexually available augments their vulnerability to sexual violence and reduces their chances of getting justice through legal machinery (Irudayam et al. 2014).

Servitude and indignity can be at the core of both manual and sexual labour. Domestic labourers, who are in fact contracted to only provide manual labour, are sexually vulnerable as poor women living under the roof of their employers. Remarkably, in reality, for a labouring poor woman, manual and sexual labour may not be that distant from each other. In the author's own research on bargirls (Dalwai 2012), the author found that a large number of women had tried out varied jobs—from factory work and home-based production to domestic work—before stumbling onto the dance bars. Many interviewees reminisced that domestic labour was good because it gave them food from people's homes, even though they were stale leftovers. But it offered very little money and included unceasing and dirty work. Consequently, when the women hit a financial crisis due to medical emergency within the family, they would end up finding lucrative alternatives in the form of sexual occupations.

The expectation that capitalist modernity and market would destroy the inherited forms of exchange and economic regulation has not been fulfilled. As Barbara Harris-White points out,

India's lowest castes are found working anything and everything, doing hazardous, back-breaking labour everywhere. Modern India has been built on their backs. (Harris 2015: xx)

Aseem Prakash demonstrates, through his narratives of accounts of Dalit entrepreneurs, how business opportunities are restricted by caste operations and normativity within markets, state and civil society. Ideology of caste shapes official decisions resulting in denial of initial formal credit to Dalit enterprise; e.g., a Dalit woman would be told that the bank will be bankrupted if it gave her a loan as Dalits do not have business acumen and will default on loans. A Dhobi will not be given loan for a shop in the city but be advised to buy a cart and continue to wash clothes by the riverside (Prakash 2015: 83–87). Dalits and minorities have to face far more hurdles to set up and successfully run small businesses and become entrepreneurs.

Further, formal education and employment sectors heavily disfavour lower castes. Deshpande (2006) demonstrates that while the Hindu upper castes are a little more than one-third of the total urban population, they are two-thirds of professional and higher education degree holders: their share in the highly educated is about twice their share in the general population. Thorat and Attewal's (2007) survey showed that for the same level of skill and expertise, employers prefer upper-caste candidates. Deshpande and Newman (2007) found that lower castes are expected to end up with lower jobs after they finish their degrees. All of these studies confirm the

continued impact of caste system in keeping the lower castes at the lower end in the job market. Women are affected disproportionately; opportunities of education and upward mobility are availed by men within a community leaving women in lowly paid, cumbersome labour.<sup>8</sup> This lens of caste and gender is useful when considering domestic labour which ranks very low on the employment ladder and seems to be, mostly, reserved for women from the lower castes.

## Caste and Domestic Labour Within Law: Comparative Jurisprudence

This part will elucidate the jurisprudence on domestic labour and caste in India and compare it with the latest developments in UK law. Keeping in tandem with the narrative style of first part of this chapter, the author compares three legal cases and contrasts the experience of exploitation and injustice of the Petitioners, their tryst with the justice system and how they fared in the Court. Two of these protagonists—Prakash and Jharna—went to Court in Delhi, whereas Parmila Tirkey, the third protagonist, went to Cambridge Employment Tribunal in the UK.

Additionally, this part will also discuss two cases of rape that augment the arguments about the relationship of caste, sexuality, domestic labour and the law.

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Prakash<sup>9</sup> was a 13-year-old boy who was brought to Delhi from his village in Madhya Pradesh (MP), without the consent or knowledge of his parents. His father had taken money and grain from Sumitrabai and was working in her house in the village Hariuman Moodra, along with his son. When the father went away for some time, Sumitrabai thought he has run away and took the young son to Delhi forcibly saying that if he will not return her money, his son will be forced to work in lieu of that without money. The son was recovered from her house in Delhi—he was being used to provide agricultural and other labour—after the father lodged a complaint with the police in MP.

The offences committed in this case are manifold and go beyond those considered by the Court:

Sumitrabai used the old *Saukari* and bonded labour methods—giving small amounts of money, but inflating it by counting the capital plus exorbitant interest rates and keeping people bonded forever. She also presumed that father's debts fall on the son, an assumption now considered bad in law.<sup>10</sup>

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<sup>8</sup>Bezwaada Wilson, the National Convenor of the Safai Karmachari Andolan (SKA) stated how caste and gender hierarchy has perpetuated the atrocity on Bhangi women who are forced into manual scavenging even after it was legally banned in 1993, in his speech at Jindal Global University in September 2016.

<sup>9</sup>State of Madhya Pradesh vs Sumitrabai and others, 2006(2) MPLJ408.

<sup>10</sup>The ancient Hindu Law makes it son's pious obligation to discharge the debts of his father—an obligation irrespective of the fact whether the son inherited any property from the father. With the

Evidence of the father said that one year back, he and his son were engaged to work for respondent Sumitrabai in lieu of Rs. 12,000/- and nine quintals of grain, and now Sumitrabai is demanding Rs. 20,222/- from him and that is the reason why she has sent his son Prakash to Delhi where he will compulsorily work as forced labourer without money. There could have been two legal, ethical ways of dealing with this debt—by either treating it a labour-to-money labour of the father, and son should yield payment; this could be deducted from the 12 K and in a couple of months the debt would be over. Or it could be a simple monetary debt, without the labour angle, and it could be repaid by the father in cash. But the arrangement Sumitrabai demanded was skewed: debt will be considered unpaid till the cash was returned with interest, and till then labour must be free; this way cash will never be returned, and labour will be bonded labour.

When this case went to the Trial Court, it decreed that Prakash was working under a labour contract with Sumitrabai and not a bonded labour held against his wish. It missed the simple legal point that Prakash was a minor and could not make any contract on his own behalf.<sup>11</sup> Further, Sumitrabai's actions violated the child labour act as well.

This was an open-and-shut case—where a child was taken forcibly to work in lieu of money borrowed by his father—(the money that never could be repaid since the labour of the father or son was not computed as wage labour)—it is abduction, forcible custody, bonded labour and could warrantee punishment under many criminal sections. Yet, the punishment was negligible. The Court convicted Sumitrabai and her son under the Section 374, IPC (pertaining to forced labour) but paid heed to their lawyer who argued that Sumitrabai was a 'widow lady of more than 55 years of age' and 'her son was a young boy with no direct allegations made against him'. Court accepted this logic—though 55 years is not even retirement age, and being a widow is irrelevant to the punishment as it was to the crime—as it found it hard to fit the upper middle-class, 'respectable woman' into the image of a 'criminal' and like many other blue-collar offenders, set her free. The fine amount was set at a negligible Rs. 5 thousand each, out of which Prakash was to receive Rs. 5,000 as his compensation. While reprimanding the lower court, the High Court offered very little as a remedy (State of Madhya Pradesh vs Sumitrabai and others, 2006(2) MPLJ408, p. 3 and 4).

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Hindu Succession Act, 1956, this pious obligation of the son to pay debts was converted into his legal obligation—to the proportion of property inherited by him upon the father's death. The Hindu Succession Act, 2005 abolished the doctrine of son's pious obligation and now the son cannot be made to discharge the debts of his father solely on the basis of his religious obligation. Children are liable to pay the pending debts only to the extent they inherit from the deceased and since in case of an insolvent they either do not inherit any property or only get the surplus after the discharge of all debts (Section 67 of Provincial Insolvency Act, 1920), they are not obliged to pay the pending debts out of their personal assets.

<sup>11</sup>Section 11 of the Indian Contract Act expressly forbids a minor from entering a contract. Any contract entered by a minor is considered worthless by the law. The Indian Apprentice Act provides for contracts for service which are binding on minors. Section 9 of the Act requires such contracts to be made by a guardian on behalf of a minor. However, this applies to training and apprentice opportunities, not to full blown domestic labour and this act does not apply to domestic labour.

The Indian urban society alludes to feudal practices in the rural hinterland, but here, the feudal crimes were committed in the jurisdiction of the national capital—offering a major opportunity to the Court to set it right and provide a precedence. But the Court faltered—in the author’s view—due to two main reasons. First, from the point of view of Sumitrabai, there was reluctance to treat ‘relatable class of people’—an upper middle-class woman seems like someone the judges would know as a relative or a neighbour—as criminals. Second, from the point of view of Prakash, the assumption of the lower-class labour being of a nominal monetary value yielded him Rs. 5 thousand as compensation for his four months of work. There was no discussion about punitive compensation for his suffering—that a child was abducted from his village, kept away from his parents, was made to live and work in an alien atmosphere meant nothing to the Court.

The next case drives this point home wherein a teenage girl was kept away from her family for years despite the desperate efforts of her mother to locate and meet her.

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Jharna,<sup>12</sup> a 14-year-old girl from West Bengal, was not as lucky as Prakash, who returned home within a few months. Jharna went missing for years after her mother placed her as a domestic help with a woman in Delhi and could not be traced by her family, NGOs or the police. Jharna’s mother, Kalpana Pandit, was a poor woman from West Bengal who came to Delhi for livelihood. She laboured as a domestic worker in people’s homes and fed her children. In March 1999, she fell ill and was unable to work or earn. In order to avoid starvation, she had to put her 14-year-old daughter to work. She took Jharna to Sunita Sen, who was the proprietor of Sahyog placement agency that provided domestic helpers in Delhi. She thought Jharna will work in the house of Sunita Sen and will be safe and secure. She did not know that Sunita Sen would place Jharna as domestic help in other people’s houses.

In April 1999, when the mother recovered from her illness, she went to the house of Sunita Sen to meet her daughter and came to know that Jharna was working as housemaid at the residence of some Mr. & Mrs. Kaul in Noida, Uttar Pradesh. The mother had neither been informed about this nor had her consent been taken. Here the harrowing story begins. Kalpana Pandit pleaded for the phone number of her daughter’s employer and tried to contact her daughter. However, she was not permitted to talk with Jharna. This disappearance of Jharna affected her family deeply but they did not know what to do, whom to approach for help. She went back to Sunita Sen who arranged for her to speak to Jharna on telephone but not let her know where she had called. She was very worried about the safety of a growing teenage daughter and decided to go visit her on the occasion of Raksha Bandhan. Along with her son, she went to the Noida address to meet her daughter, but was not allowed to see her. She made repeated attempts and trips to meet her daughter,

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<sup>12</sup>This case had three writ petitions and was treated together as a Public Interest Litigation: Bachpan Bachao and Ors. Vs. Union of India (UOI) and Ors WP (CrI.) No. 82 of 2009; Kalpana Pandit Vs State, WP (CrI.) No. 619 of 2002; Shramjeevi Mahila Samiti Vs State and Ors, WP (CrI.) No. 879 of 2007 and was decided on 24.12.2010.

went to Sunita Sen many times but to no avail. She even approached Mehrauli Police Station, but was not provided with any help or guidance there.

After a lapse of one and a half years or so, she was informed that her daughter Jharna was missing since 29.08.2000 and the missing complaint had been lodged by Jharna's employer on 06.09.2000 to enquire about her daughter. The mother was shocked to hear this and went to Sunita Sen again, who refused to give any information or to hand over the copy of the alleged missing complaint. At the end, Jharna's mother lodged an FIR in the Vasant Kunj Police Station on 02.02.2001 under Section 363 of Indian Penal Code. However, police did not investigate the matter much. The mother had also approached the Juvenile Welfare Board (JWB) and filed a case. The JWB acted promptly on the petitioner's complaint and summoned Sunita Sen, who never appeared before it and the JWB could not make any progress without her presence. The JWB at last addressed a letter to the Deputy Commissioner of Police, Crime Branch on 27.08.2001 and requested for a thorough investigation into the incident, but no headway was made. The mother grew more frantic as the time passed and filed an instant petition of habeas corpus on 23.05.2002. The Court issued notices to all parties including the placement agency, police, JWB, the employers of Jharna. And in the words of the Court, 'The matter went on from time to time, thereafter giving directions to the police time and again to trace out the missing girl, Jharna'. (Kalpana Pandit Vs State, WP (Crl.) No. 619 of 2002, para 5)

This is all we know about what happened to Jharna. Hereafter the judgement shifts the focus of the case from Jharna to the illegal functioning of placement agencies and trafficking of women and children. The reference to Jharna is made after a few paragraphs thus:

Jharna was ultimately traced out and the custody was handed over to the Petitioner. Thereafter, this petition has proceeded to tackle the issues to regulate the functioning of the placement agencies especially who were dealing with domestic child labour and provides women and children as domestic help so that such incidents do not occur in future through the instrumentalities of these placement agencies. (Bachpan Bachao and Others vs Union of India and others, W.P. (Crl.) No. 82 of 2009, para 8)

There is no mention of where and in what condition Jharna was found when she was 'traced out', how many years was she missing and what was she doing during that period? Since her Writ was filed in 2002 and this judgement is from 2010, Jharna could be missing for any number of years but we have no information as we have no answer to—who was responsible? There was no redress or compensation for Jharna, no punishment for the placement agency proprietor or her employers for their criminal actions, and lastly no reference to her rights or dignity as a worker. Somehow Jharna became inconsequential in this case while the Court shifted its focus to placement agencies, clubbing petitions about placement agencies (By Sanjivani Mahila Sanstha) and trafficking of women and children (By Bachpan Bacho Andolan) together, and treating them as one public interest litigation. Anuj Bhuvania (2016) has sharply critiqued the Supreme Court for using its PIL jurisdiction to shift, expand, alter legal cases on its own accord, without the request or even consent of the original petitioner, and thus take the legal case on a long haul without any tangible outcome.

In this case, the Supreme Court sidetracked Jharna completely and did not take her suffering seriously.<sup>13</sup> It also sidelined the issues of labour, and of the 'victims of trafficking'. Since the ultimate evil was to be the flesh trade, little attention is paid to the exploitation of children and women in middle-class homes as domestic labour. Where attention is paid, it is to the sexual abuse, but not to physical overwork, dehumanizing conditions of work, no or low payment ranks. For instance, in the Sanjivani Mahila Sanstha case, the Court mentions that "trafficked victims were kept forcibly and forced to work, were not paid, could not speak to family members, had to endure beatings and sexual abuse" and had to be "rescued by the police" (Shramjeevi Mahila Samiti Vs State and Ors, WP (CrI.) No. 879 of 2007, para 13), but does not lay out any clear directions for compensation. Even when recovery of wages was prayed for, the Court merely issued guidelines, rather than ordering reimbursement. At the end of the judgement, the concluding remarks mention that "there is no comprehensive law or anything to regulate the "employment or problem of children and adult women who are working as domestic help"". However, the remark ended by again reverting to the emphasis of any regulation (expected from the legislature) of placement agencies.

Further, while writing a long judgment and offering a lot of *obiter dicta*, the Court has ordered no tangible solutions even for trafficking. The judgement says,

Trafficking in women and children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked every day to some destination or the other and are forced to lead lives of slavery. They are forced to survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives. The Indian Constitution specifically bans the trafficking of persons. Article 23, in the Fundamental Rights, Part III of the Constitution, prohibits "traffic in human beings and other similar forms of forced labour". Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement/transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users etc., exploit the vulnerability of the trafficked person. Trafficking shows phenomenal increase with globalization." (Para 17, Bachpan Bachao/Three Writs Case)

The judgement reads like a report, rather than the decree by an authority that possesses punitive powers. All these words without punishments to culprits and/or change in policies would be just a verbose academic exercise rather than the firm legal direction expected from the land's highest Court of law.

...

The last character in the legal narrative is Parmila Tirkey, a tribal Christian woman from Bihar working as domestic labour for five years in the UK. She was employed by the Chandhoks in 2008 at the time their twins were born, and was brought to the UK to their Milton Keynes residence. After having made a promise, in her visa application, that a separate room with a bathroom will be offered to her, her employers failed to provide her reasonable living space. She slept in the landing, with no privacy, or with the children so she could tend to them during the night. She slept on a foam mattress

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<sup>13</sup>Upendra Baxi writes how Supreme Court decided to take suffering of Indian masses seriously in its new Avatar as a people's court in its PIL jurisdiction after the Emergency. See Baxi (1985).

and never had a bed. She did not eat with the family but cooked for herself after 9 p.m. and ate in the kitchen. She was not allowed to venture out of home, learn English, go to Church or to make friends. She could not use the landline to speak to her family. She would give a missed call to her brothers from her mobile phone, so they could call her. At the end of her tenure, she was not paid for four months, had no credit on her phone and she was desperate to speak to her family. So when she received some 10 Great Britain Pound as Diwali gift, she left home to go to Sainsbury to put credit on her mobile. Since she had never ventured out, she got confused, then got stuck in the rain and panicked. That's when she called the police emergency number and police came to rescue her. The employers were livid and asked her to leave—that's when they handed over her passport to the police, which was in their custody—and she left in the police car. Thereafter, she filed a case in the Cambridge Employment Tribunal for her wages for five years and compensation for ill-treatment on the basis of her caste positionality.

Her experience of the legal system and the Court was very different than of Prakash and Jharna. The Employment Tribunal did not make any comments as *obiter dicta*—it went on to categorically deal with matters at hand—it framed issues and granted relief on each legal issue. The Tribunal focused on numerous labour issues such as wage, rest, shifts, dignity and discrimination and awarded Parmila Tirkey £183,000 as the shortfall of wages computed for her years of service. For this, the Tribunal simply counted 18 h of daily labour for the duration of five years by the corresponding minimum wage relevant to the period. The Tribunal set a later date for hearing matters related to race and religious discrimination, violation of employment terms and conditions, and this might incur criminal penalty for the Chandhoks.

The job of the judges in the Cambridge Employment Tribunal was made easier by the existence of strong labour laws in UK such as National Minimum Wage Act, 1998 and the Working Time Regulations, 1998. A long history of active and united labour unions has made UK pass legislations for the protection of any workers, organized or unorganized sector—making their ill-treatment illegal. These legislations recognize domestic labour as workers—that means the protection of labour laws apply to the domestic labour as well.

The Tribunal applied the following labour laws to the Tirkey Case:

**Work time:** Working Time Regulations, 1998 require 11 h of uninterrupted rest, 24 h of rest in a week and 5.6 weeks of paid holiday per year; none of which was offered to Tirkey. The tribunal notes that she was 'on call at all times' or 'at the beck and call of the Respondents whenever they required her to carry out tasks for them, their children, or their extended family' (P Tirkey v Mr and Mrs Chandhok 2015: para 73).

**Working conditions:** The Tribunal found eating leftover food sitting on the kitchen floor, sleeping on a mattress and not having a bed, sleeping on landing with no privacy, apart from relentless hours of work with no rest and no leisure as 'unacceptable working conditions'.

The understanding derived from the Tirkey case brings us back to our subject—domestic labour and caste normativity in India. The Tribunal was convinced that the treatment that Parmila received had its roots in caste discrimination



and in her ‘inherited position’. The Judges relied on evidence that showed that she was indeed lowest on the caste pyramid—as a Tribal Christian, belonging to ‘dark skinned and poor’ people from rural Bihar (P Tirkey v Mr and Mrs Chandhok 2015: paras 8–9), who were brought up to and were expected to serve wealthy people in the plains. Tribunal surmised that she was employed not because of her skills, but because by the virtue of her birth and upbringing she had no higher expectations in life than to be a domestic servant (P Tirkey v Mr and Mrs Chandhok 2015: para 205–08). Her treatment, the Tribunal noted, is synonymous to routine caste practices of subordination and servitude of lower castes in India—discourse that allows the employer to expect servitude. The control over everything a person does—from what she eats, wears, who she talks to, where she goes and when she goes. She did not have friends or a social circle, she could not pray or attend religious gatherings. Chandhoks referred to her as a girl even though she was nearly 40 years old. They prevented her from buying and wearing clothes of her own choosing, in effect forcing her to wear hand-me-downs and attire inappropriate for her personality, e.g. she was wearing a T-shirt with an emblem FCUK like a Bunny, and when the meaning of these words was explained to her, she found it distressing. This is not a person working, earning and living her life. She has no life of her own. The Tribunal noted that this was ‘not service but servitude’ (P Tirkey v Mr and Mrs Chandhok 2015: para 202) and that Chandhoks were guilty of ‘seeking to exercise control over her not as an employee or worker but as someone servile to their needs and whims’ (P Tirkey v Mr and Mrs Chandhok 2015: para 252).

Lastly, Parmila Tirkey’s abysmal pay, as also that of domestic workers in India, is linked to the poor value of labour of the labouring castes/classes. As noted in the theory part above, the unpaid or underpaid labour from the lower castes for the benefit of the upper castes is a significant feature of the caste system, one that allows the upper castes to accumulate surplus. Tirkey’s pay was so low, not because the labour she offered was freely available in the UK or was poorly paid otherwise. In fact, in the UK, where domestic help is often sorely missed, the Chandhoks—as parents of newborn twins—would be well aware of the worth of Tirkey’s services in their daily lives. Yet, as a ‘serving class Adivasi woman’, the worth/value of her labour was deemed low and she was paid Rs. 5,000 per month and very little cash in pounds. As the author has argued elsewhere, it is not the kind of work, but who is working that decides the monetary value of wage labour in the current form of caste economics. The worth of her labour was determined by her positionality in the caste hierarchy, rather than by the type of work or services she was offering (Dalwai 2012, 2016)

...

In the discussion about caste, domestic labour and law, two cases of rape are striking—Edi Ganiraju and Rajeev Luthra case.

Edi Ganiraju<sup>14</sup> was the father of a 14-year-old girl who was studying in 8th standard and staying in a SC/ST hostel managed by the Social Welfare Department. The matron of the hostel—who was the custodian of the girls living there and responsible

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<sup>14</sup>Edi Ganiraju vs State of Andhra Pradesh, rep. by Secretary, Social Welfare Department and Ors. W.P. No. 16827 of 1997, decided on 28.04.2006.

for their care—moved this girl out of the hostel to her own residence for domestic work. There, the matron's husband raped the girl and continued to rape her till she became pregnant. When her father came to know, he filed a criminal complaint but the husband was acquitted in the rape trial. The present case is for compensation from the government for vicarious liability and damages for the wrongdoings of its employees. The petition insisted that Government had a social obligation to establish hostels for poor Dalit and Tribal boys and girls that extends to a responsibility to ensure that such hostels are managed properly and the inmates of the hostels are safe. The Court recognized that violation of the body by rape and by unwanted pregnancy would not have taken place, if the matron had not moved the girl out of her hostel space and put her in the path of a rapist. Considering this and the provisions of the Atrocity Act, the Court awarded Rs. 2 lakhs to be paid to the victim (*Eedi Ganiraju vs State of Andhra Pradesh*, para 18).

This case brings out the contours of caste and domestic labour—as domestic labour was seen as a natural implication of her status as a poor girl belonging to the lowest caste group (similar to that of the first narrative in this chapter) an experience that is shared by many others who strive to gain education.<sup>15</sup> While the woman matron exploits the physical labour, her husband assumes that it is his prerogative to use her sexual labour. Sexuality of women is controlled, accessed and exploited in varied ways within the enclave of normativity of caste patriarchy. Firstly, it tries to exploit the lower-caste woman sexually—as seen in this case. Secondly, it attempts to control sexuality, prohibit any sexual expression of women within the household—this applies not only to women who are within the purview of familial or clan bonds, but also to women who are under your employ, especially those living under your roof as full-time domestic labour.

Rajeev Luthra<sup>16</sup> case is very different than the *Edi Ganiraju* case and offers fascinating insights into domestic labour, sexuality and the law.

Rajeev Luthra, a Delhi resident, was charged with rape of his domestic worker. The woman, Sita Mani, was working in his house for a few months before she went to the police station with the manager of her placement agency and gave her statements. A case of rape against Rajeev Luthra was made out, he was arrested and spent 54 days in police custody. In the Court, the main witnesses, Sita Mani herself and the placement agency manager, turned hostile and insisted that they did not charge Luthra of rape and did not even know that police had recorded their statements or taken medical tests for a case of rape.

The Court set Luthra free and expressed intense displeasure in the words,

I may observe that there are increasing incidents of gross misuse and abuse of the laws relating to rape and sexual abuse and exploitation of uneducated, ignorant and uninformed

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<sup>15</sup>Urmila Pawar in her autobiography, *The weave of my life: a Dalit woman's memoirs*, narrates how the teacher expected her to mop and clean the school. Stalin K's film *Lessor Humans* shows interviews of little Dalit school girls who are expected to provide physical labour in the school—making tea, cleaning—owing to their caste and gender positionality.

<sup>16</sup>*State vs Rajeev Luthra*, Session Case No. 148/11. Delhi District Court, decided on 6 January, 2012.

domestic workers by unscrupulous persons/placement agencies etc. for their personal gains... Recently, there has also been a spurt of cases relating to rape and sexual abuse being registered on the allegations made by the migrant domestic workers regarding rape and sexual abuse either by the persons of the placement agency or by the employers as in the present case. In many cases these young girls from backward areas are being rampantly exploited by those running the placement agencies who use them (the girls) as pawns to settle their personal scores with their professional rivals and customers who seek employment of such domestic workers from their agencies.

While the Court noted the need to protect the ‘uneducated ignorant’, it did not do so within this decree. Again and again, the woman tried to tell the Court that she wanted her money and wanted to go back to her village and children, and yet the Court treated her like a criminal rather than a victim.

The Court ordered Criminal Action against Sita Mani and the manager for false criminal charges. In doing so, it did not consider:

- The possibility of an actual rape which might suffer the fate of many rape cases where complainants and witnesses turn hostile under pressure, intimidation or money.
- The fact proven in the Court that the wages of the domestic worker were not paid for two months.
- She wanted to go back to her village and her children as she was missing them but the employer would not let her leave. The Court noted that “on two occasions she had tried to run away but the mother of Jyoti Luthra had seen her and therefore on the next day she made a telephone call and ran away from the house of the accused and came back to the office of agency”. (State vs Rajeev Luthra, Session Case No. 148/11, page 3)

Forced stay and work along with no pay means bonded labour. The Court noted that since the salary of past two months has now been paid to her, the complainant has gone back on her complaint of rape—but has shown no sympathy to the fact that a poor village woman was held against her will in a household in Delhi, that months away from her children and non-payment of services rendered may push her to take desperate actions. It is true that Rajeev Luthra deserves sympathy if he was falsely implicated in a rape charge, but Court made no comment on the deplorable behaviour of Luthra or his family. While reprimanding the placement agencies for exploitation of migrant women, the Court has not made a single remark on the exploitation and abuse the vulnerable workers face at the hands of their employers. On the other hand, the Courts has taken a righteous harsh approach towards the complainant woman—ordering criminal action against her. It is a stark contrast to the Court’s benevolent approach while sentencing Sumitrabai (discussed in Prakash case above).

## Analysis of Contemporary Situation of Law, Caste and Domestic Labour

We studied five legal cases in this section. The picture that emerges is thus:

Domestic labour is invisible as a category in law and in jurisprudence, just as caste and associated discrimination is imperceptible. Labour issues such as a fair contract, wages, acceptable working conditions, dignity, autonomy hardly come up in the legal discourse just as caste as economic oppression lacks legal attention.<sup>17</sup> Time and again, the Court actively plays with petitioners and their identities as domestic labour in the cases above—where it witnesses the labour issues involved—yet it actively ignores to provide any solution for the same, focusing only on regulating the placement agency. Labour issues are constantly overshadowed by trafficking—the Court discussion revolves around placing regulatory framework for the agency to make sure trafficking is reduced. Indian state is protectionist in nature—rather than seeing child domestic labour, as an economic decision of a poor family which may have to depend on a child’s income to escape starvation, government and Courts view it as an issue of trafficking or an issue of trickery by the placement agency. This refusal to recognize the child or even adult domestic labour as work and protect their labour contract by creating regulatory frameworks obliterates the agency of domestic worker, her choices and possibilities of earning and living with dignity.<sup>18</sup>

Further, civil law is either weak in India or used incompetently—hence people are ‘rescued’ but there is no recovery of payment for services rendered, no reimbursement, compensation or damages for hardship caused. Since there is no recourse in Civil law,<sup>19</sup> people tend to resort to criminal law (like in the case of Sita Mani and rape charges) to make matters look ‘grievous enough’.

Dignity of labour and of the labouring person is vanquished by the caste system. This normativity of treating labour as something to be expected but not respected reverberates through Indian society and state machinery. Hence, many kinds of work, including domestic work, is not recognized as labour in law. This non-recognition, in turn, also leads to lack of dignity to the labouring person in Indian law. In the Tirkey case, Cambridge Employment Tribunal focused on the lack of privacy and dignity—as Parmila was sleeping on the floor on a mattress and on the landing where anyone could walk in anytime—and found it unacceptable condition of work for a

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<sup>17</sup>For instance, the Atrocity Act is applied to violence—murders, rapes—but not to economic oppression of Dalits. Though the Act provides for many remedies, the police hardly charge upper-caste offenders with those sections and Courts overlook this omission. See Irudayam et al. (2014).

<sup>18</sup>Feminist legal thinkers have pointed out similar problems with legal perspectives on sex work, where the agency of the sex worker and the choice of sex work as an earning possibility are submerged in the discourses that assume all sex work to be exploitation, violence and trafficking. See Ratna Kapur, Prabha Kotiswaran and Sameena Dalwai (name of the work has not been mentioned).

<sup>19</sup>An Anti-Discrimination Bill which will make civil remedy possible—in terms of adequate fines and fair compensations—has been in the pipeline for a decade now. If passed, this law will redress discrimination on the basis of caste, religion, sexuality, disability possible.

domestic worker. While workers themselves strive for dignity,<sup>20</sup> Court's guidelines for streamlining domestic work omits to mention the concept of dignity and or to provide measures for ensuring the same.

Autonomy of the domestic labour who lives under the roof of the employer and is under their total control is not considered an issue in Indian jurisprudence. Autonomy over one's body, movements, feelings and behaviour is vital to dignified human life. In the cases above, Sita Mani could not go home; Prakash was kept against his and his parents' wish; Jharna, before she even went missing, could not speak to her mother or be contacted by her family; Parmila had no money on her phone, so could not speak to her brothers for months. This is slavery. But law does not take cognizance of this or make provisions against turning a worker into a slave by taking away her autonomy.

Relatability of class or caste of the employers decides the quantum of redress in legal cases. Compare Sita Mani's punishment for charging her employer with rape to Sumitrabai's non-punishment for coercing a minor into bonded labour, and we can see similar caste logic that keeps Courts from awarding punishments in Dalit massacres (Baxi 2014; Teltumbade 2007).

Concept of extraction of labour connects caste to domestic labour in myriad ways. High number of domestic labour are poor women from lower castes.<sup>21</sup> In *Edi Ganiraju* case, there is presumption of entitlement of the labour of a poor Dalit girl student. Apart from this direct connection, the author argues that the relationship between employers and domestic labour is characterized by entitlement/obligation, power/vulnerability seen within upper caste and lower castes.

Indian Courts offer justice which is symbolic in nature. For instance, Prakash got a pyrrhic victory—with a compensation of Rs. 5 thousand, Jharna got nothing, whereas Parlina Tirkey got Rs. 2 crores as computable wages for services rendered.

## Conclusion

Domestic labour is often invisible and falls outside the purview of political action. Those who work within the organized sector, organize for their labour rights. However, we forget that the labour that is organized and has the power to mobilize and negotiate, must do so on behalf of all labour. While we await 6th pay commission<sup>22</sup>

<sup>20</sup>In a survey of domestic labour, workers emphasized that their fight is not merely for better salaries or for decent conditions of work, but also for their dignity and a dignified life for their families. See Prasad (2017).

<sup>21</sup>The Janvadi Mahila Samiti (JMS), an affiliate of the AIDWA, conducted a survey jointly with the Domestic Workers Union. It shows that most of the women doing domestic work belong to Dalit and backward classes. Of the 288 women surveyed, 148 were Dalits and 112 belonged to other backward classes whereas 10 women were Muslims. See [https://peoplesdemocracy.in/2014/06/15\\_dp/domestic-worker%E2%80%99s-struggle-recognition](https://peoplesdemocracy.in/2014/06/15_dp/domestic-worker%E2%80%99s-struggle-recognition). Accessed 24 December 2018.

<sup>22</sup>Pay Commissions are salary increment plans proposed by the Government of India for its employees.

implementation eagerly, we expect no better than ‘minimum wage’ to the unorganized female labour force. This is further compounded by the fact that while we are employees outside, we are the employers at home. We don’t bring law home (as it is like bringing a bull in a China shop). Yet we imagine ourselves to be ‘good people’ generally and ‘good employers’ compared to other people. Even academics who may feel compelled to join protests at premier colleges and university campuses on this topic, will be hesitant to take a stand on the exploitation of a domestic worker within their own housing colony. Owing to the very personal, familial nature of location of workspace, domestic labour does not form a constituency for political contestation. Unwilling to be a whistleblower within our personal sphere, where political action calls for more personal/ relationship cost, we then sacrifice the rights of domestic labour around us. By the same measure, caste system continues without a challenge. While we proclaim that the caste system is passé, we are unable to protest against the caste practices within our own families or clan.<sup>23</sup> Hence, oppression in both continues unchallenged.

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<sup>23</sup> In a survey conducted of law students in 2015, very few upper-caste students were able to emphatically say that Bhangis can enter their homes or kitchens or drink water from the same utensils as the others. Discussed in detail in author’s paper titled, ‘Caste in legal education: a survey of law schools in Delhi’ (Currently under review with the Asian Journal of Legal Education).

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# Chapter 7

## The Informal Domestic Workers in India—A Descriptive Mapping of NSSO Data



Yugank Goyal and Rakesh Kumar

### Introduction

The discourse on domestic workers in India is largely dominated by policy reports from development organizations rather than scholarly attempts to understand its dynamics. A regular search in Google Scholar on ‘domestic workers India’ takes us to Indian cases sandwiched amongst many others (Bartolomei 2010; Adams and Dickey 2000), and bundled up under broad disciplinary umbrella of gender (Ray 2000; Raghuram 2001),<sup>1</sup> with few instances of stand-alone economic study of Indian domestic workers building its own discourse. Issues related to legal architecture in this context are starkly posed (Neetha and Palriwala 2011), but even they appear against the backdrop of international conventions and practices. As such, scholarship in the Indian context, outside sociological inquiries, remains at the mercy of research from national/international organizations, and they form our basic understanding, in general.

Women in Informal Employment: Globalizing and Organizing (WIEGO) and International Labour Organization (ILO) lead this effort at international level.<sup>2</sup> In domestic quarters, in addition to recent interest by the National Skill Develop-

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<sup>1</sup>Notice that significant scholarship on non-Indian domestic workers often hinge on migration studies. See, e.g. Yeoh and Huang (1998) and Yeoh et al. (1999) for earlier studies. *See also*, Moors (2003)

<sup>2</sup>See, in particular, d’Souza (2010).

<sup>3</sup>The Ministry of Skill Development and Entrepreneurship in India has a separate Sector Skills Council, focusing on domestic workers, called Domestic Workers Sector Skills Council. See <http://dwsscindia.in/>. The National Skill Development Agency engaged KPMG, the consulting firm, to produce a Report.

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ment Corporation (NSDC),<sup>3</sup> the non-profit sector organizations like Self-Employed Women's Association (SEWA)<sup>4</sup> have conducted noteworthy studies and programmes to better understand the complex characteristics of paid domestic work in India (NSDC 2013; SEWA 2014). In many ways then, this would be one of the few areas attracting analysis in social science disciplines in which policy discussions have preceded economic research. This reflects two specific ironies, coexisting rather uncomfortably. First, it shows how important study in this area is. Secondly, it also exposes the difficulty that is inherent in undertaking such study.

One of the reasons for the difficulty is lack of reliable data. In this sense, the difficulty is shared by all types of studies that focus on informal markets and labours, around the world. By definition, informal markets are unaccounted and therefore escape any quantitative scrutiny. Anecdotal surveys are invaluable in such cases, but often under the paucity of data, large-scale insights cannot be drawn. This creates a gaping hole in research agenda. Lack of adequate numbers makes it difficult for policy makers to intervene using evidence. Much of our understanding of domestic workers relies on sociological underpinnings, which is indeed valuable; but without complementing it with some data, research remains incomplete from policy angle.

This chapter is an attempt to fill this gap by employing available data on domestic workers in India. While consistent estimates on domestic workers in India are hard to come by, with official and unofficial estimates on a simple 'number of domestic workers in India' diverging from 2.5 million (Palriwala and Neetha 2009) to as far as 90 million (often cited in newspapers<sup>5</sup>), the National Sample Survey Organizations' (NSSO) data are often the most reliable in this regard.<sup>6</sup> We use these official figures from NSSO surveys (68th round, July 2011 until June 2012) to estimate various important parameters in the context of domestic workers in India, comparing these parameters across all the states in the country. In this sense, the chapter assumes a descriptive colour and explores the relative indicators of the conditions of domestic workers in different regions of India. In doing so, it aims to trigger richer quantitative studies in this field. The data, as shown in the chapter, offer some novel insights that may aid cultivating a diverse and informed judgment as regards policy prescription at national level. It will also encourage emergence of new research in the area, which relies on data more than anecdotal evidence. Insofar as policy makers are critically influenced by scholarship in a given field to frame their methods, this chapter will help refine those frameworks, or at the very least, drive a thinking in that direction.

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<sup>4</sup>See, for instance, <http://sewadelhi.org/advocacy-campaigns/domestic-workers/>.

<sup>5</sup>See, for example, Kalpana Sharma (2009); The Times of India (2009); The Washington Post (2008).

<sup>6</sup>NSSO is indeed one of the most scientifically conducted sampling organizations in the world, given the size of India. See, in particular, Banerjee et al. (2017).

The following part of the chapter engages with the literature and locates other quantitative studies in the context of domestic workers. Then the chapter delves into explaining the data, along with the limits of its scope. This is followed by an analysis of the key findings. In conclusion, the chapter makes a case for further such research that can contribute towards meaningful policy interventions.

## Literature Review

Studies on domestic workers cross-navigate across countries and regions, locating themselves under the issues of labour and informality. ILO's report on domestic workers' legal protection across countries and some basic numbers is noteworthy (ILO 2013). The report shows that globally, there were more than 52 million domestic workers in 2010 and this figure had increased by around one-third in 20 years. Further, the domestic work contributed to 7.5% of women's wage employment, with significant higher shares in developing countries. For India, the figures of housemaids/servants in 2004–05 reached an upward trend of 2.3 million, of which more than 2 million were women (data from NSSO 2004/5). In addition to pulling out data on number of domestic workers regionally, it mapped legal architecture (un)available for the vulnerable low-income groups of domestic workers globally. Analyses of legal issues related to domestic workers have been ILO's prominent contribution in several years (ILO 2010, 2011, 2012).

WIEGO's law and informality project, in collaboration with SEWA (2014), maps out the lacuna in legal protection in India that addresses the need of this sector. The labour legislations in India are largely focused on organized workforce and unapologetically bypass the informal sector, which is a stupendous 93% of total workforce in India, which also includes domestic workers. But the project also emphasizes the recent efforts like the Draft National Policy on Domestic Workers 2011.

The Policy is a welcome step, which recommends a minimum monthly wage of INR 9000 for skilled full-time workers, along with paid and maternity leave. But the Policy is yet to be enforced. However, in the meanwhile, the Ministry of Skill Development and Entrepreneurship has joined the discourse rather emphatically, under which, the NSDC has expressed its commitment to train 2.5 million domestic workers in next six–seven years.<sup>7</sup> The Report prepared by KPMG, commissioned by NSDC, offers broad brush-strokes to paint the current landscape (NSDC 2013). Taking skills as central argument, the report offers fresh perspectives to look at the informal work in need of training and skills. In terms of descriptive statistics, the report points out that 90% of workers in this sector in India are women, average monthly income is INR 6000 with 70% earning less than INR 2000, education levels for 80% of workers is below Class V, 65% of workers fall in the age group of 28–40 years. These figures are derived from primary research and are of little reliability, although references have been made to Census and NSSO surveys adding

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<sup>7</sup>Business Line (2017).

some level of official data points. At a general level, the report is classificatory in nature. The NSDC is suggested to have invoked Sector Skill Council for domestic workers.<sup>8</sup>

Outside India, and within scholarly literature, Schwenken and Heimeshoff (2011) make a worthwhile effort to map the statistical imagery of domestic workers around the world. But its focus, like many other international studies, is on numbers and migration impetus. India is covered as a ‘sending’ country more than a host. In fact, there is a significant dearth of studies on internal migration for domestic work, in the South Asian context (Deshingkar et al. 2014).<sup>9</sup> For Latin America, Tokman’s (2010) work is notable. In the case of South Africa (which dominates study locale in African continent), Dinkelman and Ranchhod (2012) investigate the impact of new minimum wage laws imposed on employers of domestic workers. With little enforcement and auditing of the domestic workers, they find that in the short run, employers choose to respond to the law, leading to a better and more formal wage and employer–employee relationship in the region.

Such a study would be invaluable in the Indian context, especially when the pressures to enact a law for protecting domestic workers in the country are high. Yet, given the lack of data analysis, scholars must rely on anecdotal evidence. These evidences are valuable in their own right, for example, the study of Chamaraj (2007) which highlighted plight of domestic workers in Bangalore, the Indian Silicon Valley, with the case of Rukminiamma, whose 35 USD monthly earnings stood in stark contrast with that of her employer, at 2500 USD. But generalized conclusions are difficult to be drawn, especially if the sample sizes are small. Rao’s (2011) empirical work in Jharkhand, where a large number of domestic workers migrate from, focuses on around 30 tribal women’s experience.

The anecdotal studies are greatly complemented by those who have conducted fieldwork and attempted to make sense of the data. Amongst noteworthy studies in this context, Gurtoo’s (2016) work is important. With a sample of 487 domestic workers in the state of Karnataka, she shows feminization of the work as naturalized labour. Focus of this work being located at the intimate private space of the employer, makes it possible for her work to bring forth the unfair treatment meted out to female domestic workers. Locating the study of domestic workers in Chennai in the context of increasing urbanization,<sup>10</sup> Coelho et al. (2013) undertake a survey of 726 households of the city and effectively underscore the choice architecture of paid domestic work in the region. For Delhi, Neetha’s (2004) work is excellent. She deconstructs male-centric narratives of migration by looking at domestic workers in Delhi, using data from a fieldwork that included 465 part-time and 110 full-time domestic workers in the city. Sharma and Kunduri (2014) make an effort to understand why women choose to work in domestic locales rather than factories, although their ideas reflect yet another evidence for the existence of power dynamics

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<sup>8</sup>Minister of Skill Development and Entrepreneurship mentioned it in a Lok Sabha question. See <http://pib.nic.in/newsite/PrintRelease.aspx?relid=121311>. Accessed 10 June 2018.

<sup>9</sup>See, however, Raghuram (1999).

<sup>10</sup>See also, for Delhi, Chakravarty and Negi (2016).

in workspace without offering anything new. Amongst rather superficially descriptive accounts of tier-II cities in India, Augustine and Singh's (2016) mapping a survey of 100 domestic workers in the city of Lucknow and Parmar's (2017) exploration of marginal propensity to consume amongst 150 domestic workers in Surat are a desirable start.

These studies offer highly meaningful contexts to examine the situation of domestic workers in India. But their sample sizes remain very small, leading to a loss of generalization. This shortcoming can be addressed if exhaustive surveys are done. NSSO offers this solution. Yet, their data sets for studying dynamics of domestic workers in India have hardly been explored. NSSO's 55th round (1999–2000) data are extensively explored by Shanthi (2006), focusing on female migration in India, of which domestic work assumes an important part. This data set is exploited by Banerjee and Raju (2009) to explain that barring younger women, the stereotypical work profiles of women driven by familial and domestic responsibility have not changed through urban migration. An earlier scholarly work by Sen and Sen (1985) is invaluable in centralizing domestic work, rather than migration. The authors use NSSO's 32nd round data (1977–78) and show that economic need is paramount in women's choice of securing domestic work. This chapter builds on this approach while offering more diverse findings. The chapter engages with data that provides information about their numbers across gender, geography, religion and caste, age, marital status, payment structures and expenditure values.

## The Data from NSSO

This work uses the National Sample Survey (NSS) data. It is the primary source of information on labour-force-related indicators at the national and state levels. The survey on Employment–Unemployment is carried out once in 5 years. The NSSO 68th round on Employment–Unemployment was conducted by the National Sample Survey Office during July 2011–June 2012. The survey questionnaire elicited characteristics pertaining to employment and unemployment and labour-force characteristics (i.e. household characteristics, demographic particulars, usual principal activity status and subsidiary economic activity status, labour time, wage and salary) at national and state level. The 68th round comprised 59,700 households in rural areas and 42,024 in urban areas, and the number of persons surveyed was 456,999 (280,763 in rural areas and 176,236 in urban areas).

The definition of domestic worker according to the National Classification of Occupations (2004) is covered under code 913.<sup>11</sup> Division 9 pertains to Elementary Occupations, and 913 under it refers to domestic and related helpers, cleaners and launderers. The problem of this codification is that 913 includes, in addition to domestic and related helpers, cleaners and launderers working independently or in

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<sup>11</sup>See the Code Structure at <http://dget.nic.in/upload/uploadfiles/files/publication/Code%20Structure.pdf>. Accessed 1 September 2017.

offices, hotels and other establishments. But pulling out enterprise code from the questionnaire leads us to insulate only those workers who are working in a private household employed as a maid, cook or watchman. The activities of the domestic workers include work involving physical labour and do not require any education or technical knowledge, recognized by NSS as manual work.<sup>12</sup>

## Findings

The NSSO 68th round data reveal very interesting insights into the state-wise status of domestic workers in India. The chapter categorizes data under broad heads to make better sense of it.

### *Number of Domestic Workers Across Gender*

The total number of domestic workers in India based on the survey is almost 3.25 million. This is different from a variety of other measures, because as mentioned earlier in the chapter, we understand domestic workers based on enterprise type code 8 of the NSSO questionnaire, which is a closer estimate of the type of work we want to focus on. Using the NCO code disturbs the focus, which must remain with paid domestic work alone (as discussed in previous part). If NCO code 913 is used, the total number comes to around 4.1 million, which is closer to the oft-quoted figure.

Figure 1 maps out state-wise population across gender. Barring a few northeastern states, Punjab, Odisha and Himachal Pradesh, women significantly outnumber men. At the country level, around 65.3% domestic workers are female and 34.7% males. Table 1 is of help in categorizing states through female-to-male sex ratio in this workspace. While UP has more male than female domestic workers, MP has more than ten times female workers than male. These findings bring in new perspectives to the discourse on feminization of domestic workforce.

### *Geographical Dominance*

Of the 3.25 million domestic workers, where are they found mostly? Note that we are concerned with where are their employment space, rather than where do they come from. Turns out that ten states employ around 90% of domestic workers in India. These states are Maharashtra, Bengal, Andhra Pradesh, TN, Karnataka, Assam, Kerala, UP, Gujarat and Delhi. The first three states make up for more than 50% of domestic workers' employment (see Fig. 2).

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<sup>12</sup>The concepts and definitions in NSS can be found at [http://mospi.nic.in/sites/default/files/publication\\_reports/concepts\\_golden.pdf](http://mospi.nic.in/sites/default/files/publication_reports/concepts_golden.pdf). Accessed 10 June 2018.

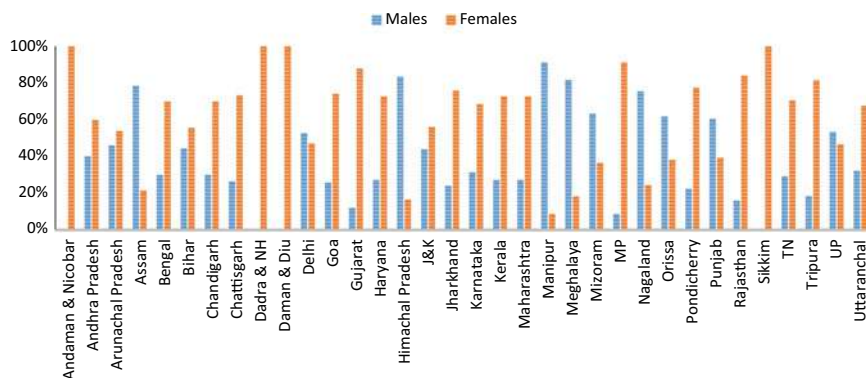


Fig. 1 Proportion of males and females in domestic work in Indian states

Table 1 Female-to-male ratio of domestic workers (state-wise)

Female-to-male ratio ( <i>r</i> ) in large states			
$r < 1$	$1 < r < 2$	$2 < r < 4$	$r > 4$
Assam	Andhra Pradesh	Bengal	Gujarat
Delhi	Bihar	Chhattisgarh	MP
HP	J&K	Goa	Rajasthan
Odisha		Haryana	
Punjab		Jharkhand	
UP		Karnataka	
		Kerala	
		Maharashtra	
		TN	
		Uttaranchal	

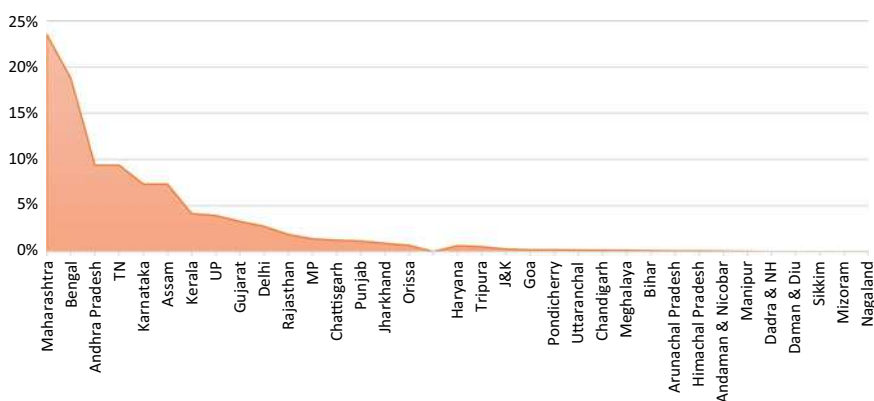


Fig. 2 Percentage of total domestic workers in India, employed state-wise

### Religion and Caste

Figure 3 shows the religious makeup of domestic workers across the states. A vast majority around the country (barring Punjab, where they are predominantly Sikhs), are Hindus. Overall, 81% of domestic workers in India are Hindus, followed by 12% Muslims.

One would imagine that caste dynamics amongst domestic workers would be predictable and vast majority would belong to SC or OBC category. This is not necessarily true. While OBC do form the largest caste groups amongst domestic workers, the difference between OBC and General is not very high. 37.8% of workers are OBCs and 31.7%, General. SC contributes to 26%, while ST is a mere 4.4%. Figure 4 shows the relative shares and we can see high share of OBC and General workers. Table 2 shows the ratio of General to various caste categories (ST/SC/OBC), and we notice that in several of the states, this ratio is greater than 1.

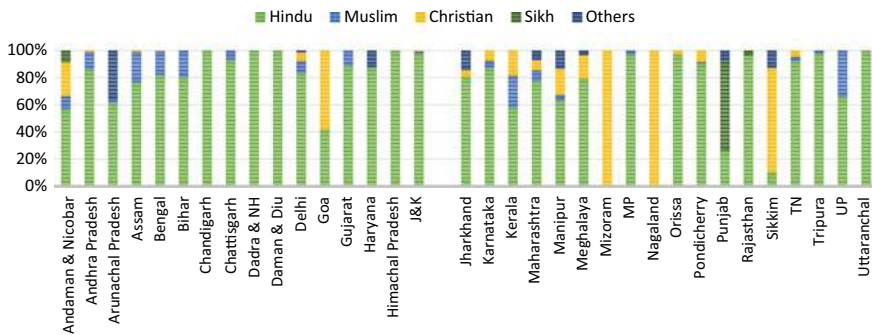


Fig. 3 Religious makeup (state-wise)

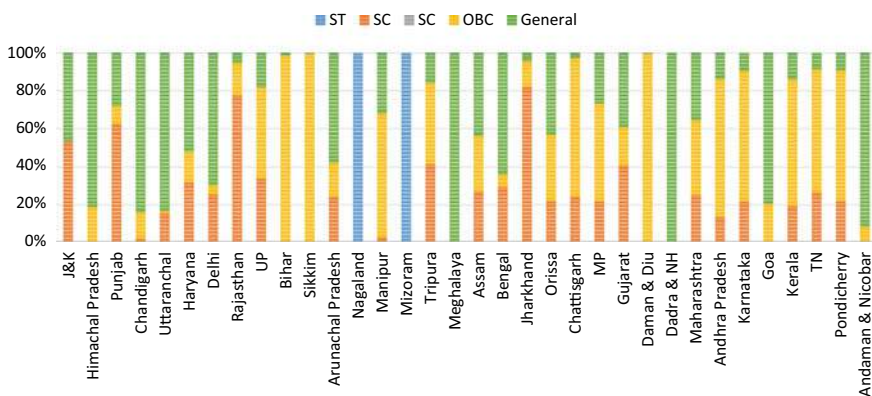


Fig. 4 Caste dynamics of domestic workers

**Table 2** Ratio of General to other caste groups in Indian states (blanks indicate 0% of that particular caste group in that state)

State	Gen/ST	Gen/SC	Gen/OBC
Andaman and Nicobar			10.68
Andhra Pradesh	5.19	1.00	0.19
Arunachal Pradesh	0.67	2.37	3.16
Assam	3.40	1.61	1.47
Bengal	57.61	2.18	9.54
Bihar			0.01
Chandigarh		39.76	5.98
Chhattisgarh	0.12	0.11	0.04
Dadra and NH			
Daman and Diu			0.00
Delhi	31.45	2.71	14.28
Goa	0.57		3.85
Gujarat	2.38	0.95	1.95
Haryana	9.03	1.62	3.13
Himachal Pradesh	1.45		4.28
J&K	83.84	0.86	
Jharkhand	0.17	0.05	0.30
Karnataka		0.43	0.14
Kerala		0.70	0.21
Maharashtra	8.82	1.40	0.89
Manipur	1.34	11.48	0.49
Meghalaya	1.54		
Mizoram	0.00		
MP	1.26	1.22	0.52
Nagaland	0.00		
Orissa	1.65	1.95	1.21
Pondicherry		0.41	0.13
Punjab		0.44	2.85
Rajasthan	0.51	0.07	0.30
Sikkim	0.00		0.00
TN	156.49	0.32	0.13
Tripura	0.85	0.38	0.36
UP	2.04	0.53	0.37
Uttaranchal		5.36	65.64



### Age and Marital Status

Average age of domestic workers in India is 37.7 years. The dispersion of minimum and maximum age is rather high, and Fig. 5 exhibits it, along with state averages. Sikkim and Nagaland have the youngest workers (18–19 years), while HP, MP, Bihar, Manipur, Goa, Kerala, TN and Pondicherry have the oldest (above 40 years).

Around 61.5% workers are married, while 18.3% are unmarried. Interestingly, very few (3.1%) are divorced, although 17.1% are widowed. See Fig. 6 for state-wise variation. It appears that domestic work, however undignified on the surface, mostly has a tacit approval of the family of the male or female engaged in the profession.

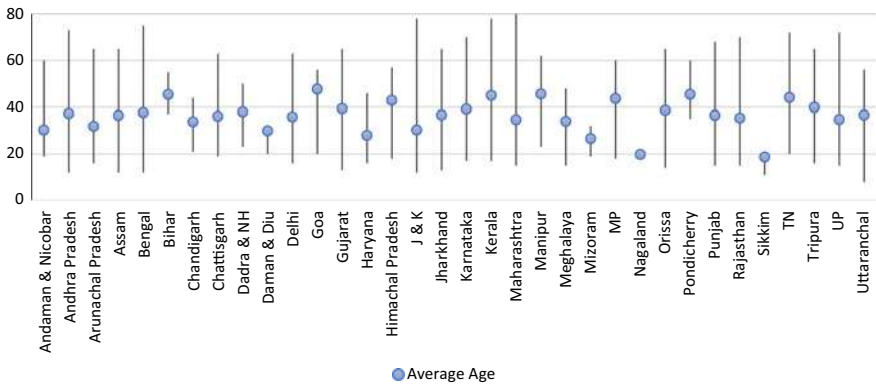


Fig. 5 Minimum, maximum and average age of domestic workers in Indian states

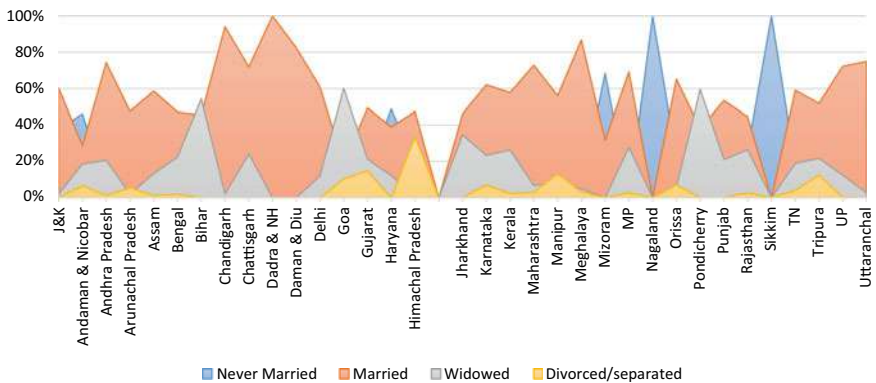


Fig. 6 Marital status of domestic workers across Indian states

### Frequency of Work and Payment

Three types of questions appear here. First, whether domestic work is full time or part time; second, how many days in a week do they normally work; and third, what is their usual payment schedule frequency (do they get paid daily, weekly or monthly salary).

Turns out that a large majority (an average of around 92%) of domestic workers in India work on full-time basis, while the rest on part-time. Figure 7 illuminates this point. The large states where part-time domestic workers are more than 20% of the total in that state are Jammu & Kashmir, Uttaranchal, Rajasthan, Odisha and Gujarat.

Figure 8 illustrates that over 93% of domestic workers work for seven days a week, with no leave whatsoever. This reminds us of the exploitative nature of the work and the necessity of government intervention. Kerala, Assam, Meghalaya and Pondicherry give a day (or occasionally, two) off to their domestic workers, but share of these domestic workers remain around 10% only.

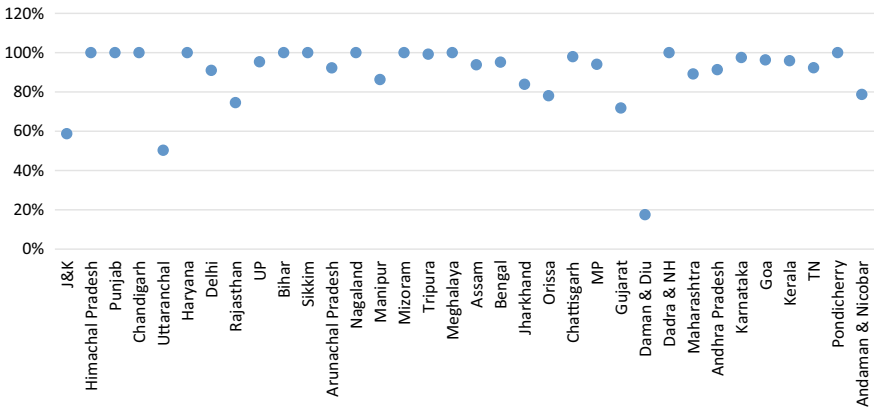


Fig. 7 Share of full-time domestic workers (state-wise)

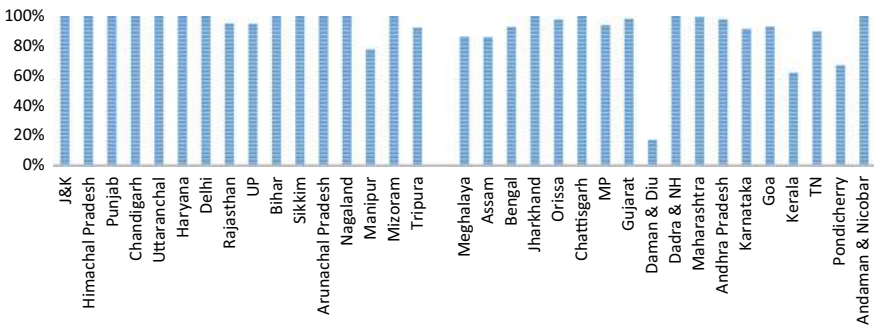


Fig. 8 Percentage of domestic workers who work for all seven days of the week

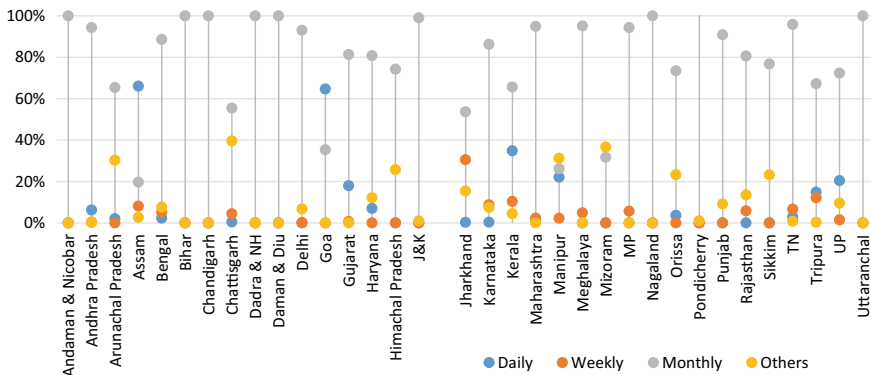


Fig. 9 Frequency of payment

Most domestic workers in India get paid monthly, making its characteristics rather close to the organized sector in this context. Of the total, almost 83% get paid on monthly basis. Figure 9 shows variations across states. Goa, Kerala, Gujarat, Assam and UP exhibit a relatively higher share of daily payment, rather than monthly.

### Salary and Expenditure

The NSS collects information about wage and salary earnings (received or receivable) for the work done during the week in INR on a weekly basis. To calculate daily income in rupees, the weekly wage and salary earnings (total of cash and kind) have been divided by 7.

Income and expenditure is one of the most important indicators to assess the well-being of domestic workers in India. Figure 10 shows the span of minimum and maximum daily wages earned and their averages. Note that the values here are the natural logarithms of actual wages, to give a better comparative glimpse. Figure 11 contains the exact average daily wages earned by the domestic workers.

Rounding off to the approximate number of days in a week they work, Fig. 12 shows the monthly income. Overall, Indian per capita income in 2011–12 (constant prices) was INR 3,170. During this time, the figure for domestic workers pegs at around INR 4,008. In general, therefore, there is a strong reason as to why domestic work may make economic sense. If the per capita income of the state is lower than what domestic workers earn, there may be reason to believe that the work does offer economic surplus. This calculation was done for all the states—see Fig. 13; notice that a large number of states (Bengal, Bihar, Jharkhand, Karnataka, Kerala, MP, Odisha, Punjab, UP and northeastern states, except Sikkim and Tripura) in which average per capita income exceeds that of domestic workers reflect miserable wages of people working as domestic workers.

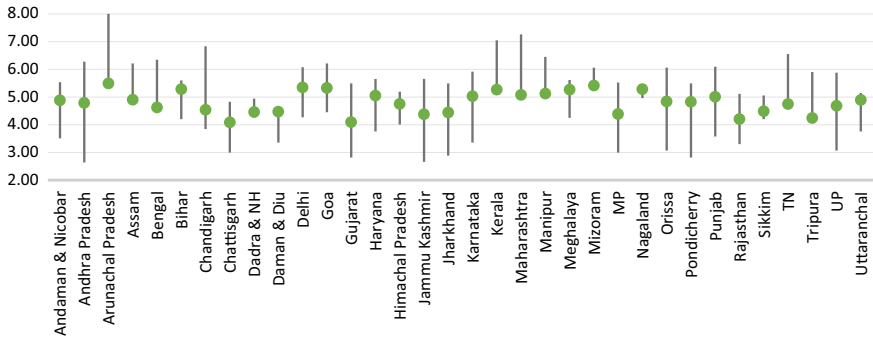


Fig. 10 Minimum, maximum and average daily wage of domestic workers across Indian states. The values are the natural logarithms of wages

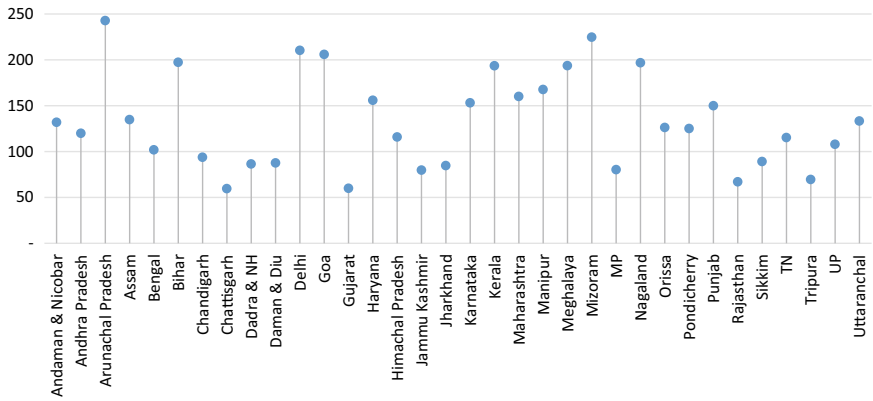


Fig. 11 Average daily income

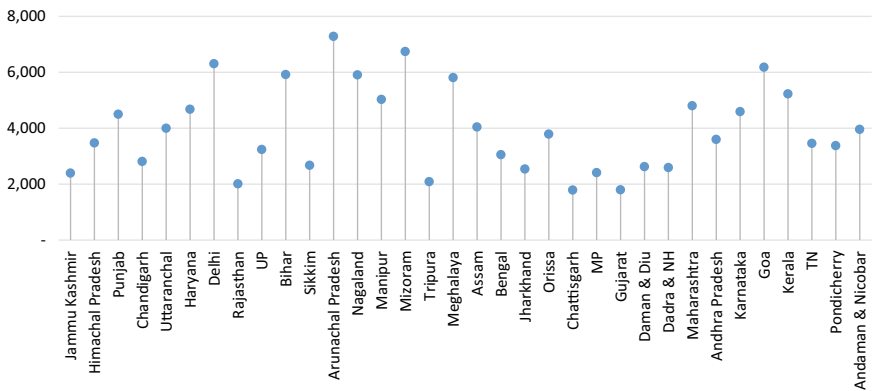
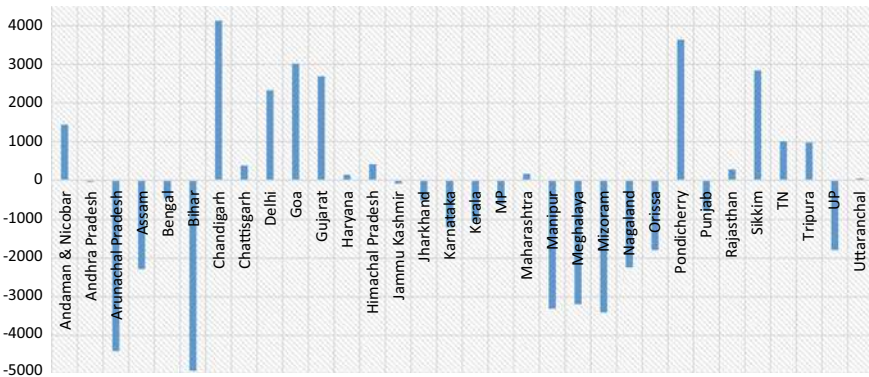
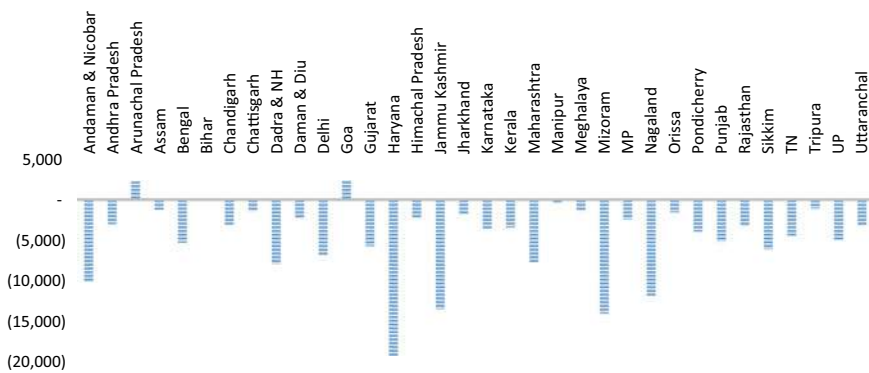


Fig. 12 Average monthly income of domestic workers



**Fig. 13** Difference between monthly per capita income of state and per capita income of domestic workers (all values are 2011–12 nominal)

Monthly per capita expenditure (MPCE) shows the ratio of the total household consumer expenditure during a period of 30 days to the size of the household. The average household size in states was found and then the total monthly expenditure for the entire household was observed. It was found that except Arunachal Pradesh and Goa, all other states exhibit a massive shortfall between earnings and expenditure (see Fig. 14). This must mean that the financial situation of households necessitates more than one earning members in the household. Both spouses seem to be employed, and there is a high likelihood that children are also working, to sustain the MPCE. This also means that workers are highly vulnerable to income shocks.



**Fig. 14** Monthly per capital expenditure and the shortfall, adjusting for household average size, state-wise

## Discussion

There are five principal takeaways from the above findings that may directly or indirectly furnish valuable insights useful for policy prescriptions.

Firstly, while the data do indicate a feminized nature of the workspace in most instances, it cannot be generalized across regions. This is a useful insight. Narratives that universalize gendered dimensions of workspace often rely on anecdotal evidence of females' higher proportion in this profession. And this is indeed true. But not always. Given the dominance of research in this area by feminist studies, these data require us to shift our axis of research to male workers as well, since they form a sizable proportion of the total. We contend that higher patriarchal filial units in states like UP, Punjab, Odisha and the others explain males outnumbering females. This requires further investigation, but there must be a social context to higher males as domestic workers in some states rather than females. Once we digest this statistic, scholars should build newer arguments to explain a large number of male workforce as domestic workers and whether this has any implication on the voluminous assumptions about how this workspace is feminized. Relevant regulations, however crafted, must keep in mind the gendered notions carefully, and any policy design must recognize the share of this space by both males and females.

Secondly, issues related to domestic workers are not economic issues alone but cultural as well. The socio-cultural contexts in which we find that large states like Rajasthan, MP, Bihar, Chhattisgarh, Jharkhand and Northeastern states (except Assam) have a miniscule share in total domestic workers in India, while economically similarly placed states like UP, Andhra Pradesh, Maharashtra and Bengal take up their large chunk. This means, the necessity of domestic workers is driven not purely by economic reasons but follows a path-dependent cultural pattern of households in regions where it is more prevalent. This indicates that policies and rules must be local in nature, or at the very least, locally cognizant. Universal policies of New Delhi may impose higher costs than expected and ground realities must become central in understanding what kind of regulatory architecture must be carved out.

Thirdly, contrary to popular perception, a significant number of domestic workers come from 'General' caste category. This conclusion, however, must be taken with caution. Many of these responses are self-declared, and it is likely that respondents lie about their castes. Often many upper-caste households do not want to employ a domestic worker of a lower caste. Therefore, even though declared caste of domestic workers is 'General', in reality, these figures would be lower.

Fourthly, domestic work as such is a middle-aged income source. This could imply two things. Either it means that workers take up this profession perhaps after their children have grown up, and it is possible that the consideration for domestic work may be of physically less challenging nature, turning many into domestic workers later in life. Or, it may very well be possible that the attrition rate of domestic workers is very low, thereby ensuring a long-term serving. At the time of primary survey by NSSO, it is possible that the workers had been working for a long time and therefore have reached their middle age.

If the latter is true, it raises another interesting question. Coupled with a high share (90%) of full-time employment (as compared to part-time) in domestic work, low attrition rate reflects either a sense of satisfactory employer–employee satisfaction or a lack of alternative opportunity for the domestic worker. Further research is needed to examine this. If the latter, governments must consider institutionalizing minimum wages in this sector (some states have already implemented minimum wages for domestic workers). This emerges from our findings on income and expenditure. Most of the families of domestic workers would have little savings, and this necessitates a policy design in some direction.

Fifthly, there is a dominance of domestic workers who work for all seven days a week. This further calls for a policy framework to intervene in this sector.

## Conclusion

The ideas related to the issues of domestic workers are fairly old in the history of labour economics. More than a century ago, Rubinow (1906) claimed that the problems of domestic workers are gradually being solved. This has not only turned out to be false, but ridiculous in a way. No wonder then, in 2011, after a long two-year deliberation, the International Labour Conference adopted the Domestic Workers Convention (ILO Convention C-189) (Pape 2016). India is yet to ratify it, and the figures presented in this chapter indicate that the value of such ratification must remain cognizant of the differential experiences of various regions in India.

This chapter engaged with NSSO 68th round data on domestic workers in India and yielded valuable statistical data. A summary of the average estimates of the indicators is given in Table 3, which offer key takeaways. The value in understanding data lies not only in quantitatively supporting some of the subjective claims that scholars often make, but also arrests their tendencies to make sweeping generalizations without adequate information. Further research is needed to make a detailed sense of the data presented here, and we hope that this work can be built upon to carve out meaningful policy responses. This is particularly true because most labour legislations in India keep domestic workers out of their ambit (Gratuity Act 1978, Industrial Disputes Act 1948, Maternity Benefits Act 1961, Workman's Compensation Act 1923, Weekly Holiday Act 1942, to name a few). The Domestic Workers (Registration, Social Security and Welfare) Act 2008 is a positive step, but little do we know about its efficacy. In fact, in 2007, the domestic work was included in the Minimum Wages Act, 1948 under 'daily waging' activities and this was a healthy sign. But no study (akin to Dinkelman and Ranchhod 2012) has been done in India, attempting to find out if the results have indeed been positive after the 2007 amendment. This and many other such questions remain posed and policy answers remain incomplete.

**Table 3** Basic descriptive statistics

Number	Male	34.75%
	Female	65.25%
Religion	Hindu	81.27%
	Muslim	11.71%
	Sikh	8.64%
	Christian	4.15%
	Others	2.01%
Caste	SC	26.04%
	ST	4.38%
	OBC	37.84%
	General	31.74%
Age	Min average	17.38 years
	Max average	59.11 years
	Average	36.3 years
Marital status	Never married	18.29%
	Married	61.53%
	Widowed	17.12%
	Divorced/Separated	3.05%
Schedule	Full-time	91.67%
	Part-time	8.27%
Weekly working days	Seven days	93.66%
	Less than seven days	6.34%
Payment frequency	Daily	9.47%
	Weekly	4.54%
	Monthly	83.32%
	Others	4.50%
Daily wage	Min average	Rs. 31.71
	Max average	Rs. 481.76
	Average	Rs. 134.58
Monthly per capita	All Indian workers	Rs. 3170
	Domestic workers	Rs. 4008
MPCE	Min average	Rs. 779.78
	Max average	Rs. 6229.76
	Average	Rs. 1865.17



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# Chapter 8

## Governing Dynamics of Intra-household Bargaining Relations in Informal Urban Spaces: Reflections from the Case of Female Domestic Workers Across India



Deepanshu Mohan

The shades of complexity present in understanding the governing dynamics of gender relations, in any given society along with its economic outcomes, emerge as a difficult, yet fascinating area of study. Lot of debates and discussions have happened in fields across social sciences, trying to study the gendered nature of economic outcomes within households based on the intra-household distribution of economic resources (say, income, physical assets and property rights) between women and men.

In economics, most of the mainstream neoclassical literature studying the economics of family still assumes a common utility and demand function in accounting for the material well-being of a household/family<sup>1</sup> and its members. The assumptions of a common utility function, reflecting a shared set of preferences and pooling of income between the woman and man in a family, were first modelled by Becker (1965, 1981) in his theory on the ‘unitary model’ of a family.

However, a number of economists over the past few decades have critiqued Becker’s ‘unitary’ conceptualization of households, offering alternative models of assessment of well-being while accommodating for varying preferences and interests present amongst multiple members present within a family set-up.<sup>2</sup> Some initial

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<sup>1</sup> The terms ‘household’ and ‘family’ are interchangeably used by the author throughout the chapter.

<sup>2</sup> On a more theoretical level, Nancy’s (1986) work allowed a normative comparison between the neoclassical convention on aggregating individual tastes and preferences (in a joint/common utility function) with the Marxian approach of aggregating men, women and children into undifferentiated classes based on their household membership. Nancy’s (1986) argued how the emergence of capitalist relations of production (through access to its factors and means) transforms patriarchal systems, increasing the bargaining power of both women and children within the household setup.

<sup>3</sup> John Nash (1950).

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critiques to Becker's unitary model used a 'cooperative bargaining approach' (drawn from John Nash's<sup>3</sup> classic work on 'bargaining problems' in a two-person game), relaxing only the assumptions of *common preferences* (between women and men in a household) while retaining the assumption on *pooling of income* (between women and men) in a given household (McElroy and Horney 1981; Manser and Brown 1980).<sup>4</sup>

In case of countries in South Asia (particularly India), empirical studies (Sen 1981, 1983, 1990; Agarwal 1990) built on earlier findings<sup>5</sup> proposed new alternative models while relaxing the assumption on *pooling of income* between women and men, to widen our understanding on different aspects behind the gendered nature of asymmetric distribution of economic resources within the family that significantly affects the social status of women in a household and their *bargaining power*.<sup>6</sup> Most of these studies made valuable contributions in helping us understand the gaps present in the socio-economic arrangements of families working within formal, organized (or regulated) sectors as against those part of an informal and unorganized (or unregulated) sectors of the economy.

This chapter, focusing on urban families (being part of the informal<sup>7</sup> economy) aims to analyse the socio-economic position of women working as domestic workers (in urban households) and cognize their relative bargaining power (i.e. their preference in decision-making abilities) in their own household arrangements. Most women working as domestic workers are rarely included in any framework of analysis attempting to objectively study their social and economic position in the household. This is because most domestic workers often remain a part of an *invisible* labour force (outside the formal accountable measures in documented employment statistics), making it difficult for undertaking any detailed analytical enquiry.

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<sup>4</sup>These alternative models assumed a *pooling of income* between a woman and a man in any household based on which intra-household decision-making was shaped affecting the household's overall consumption expenditure, income accumulation. These 'cooperative models' assumed the attainment of Pareto-optimality in household decisions between the members of households involved in 'relation to information availability' and 'bargaining availability'.

<sup>5</sup>Some of these studies include more empirical insights from European countries, including studies by Mader and Schneebaum (2013) that closely examined the reasons for differences in the patterns of intra-household decision-making levels, between women and men employed in organized, formal sectors of the economy. The study emphasized how the gendered nature of intra-household decision-making levels depended on the differential nature of social and economic power, demonstrated by relative education and income levels of women and men, as part of a given household, highlighting how relative earnings of partners (women and men) working in regulated sectors of employment, their education level and the nature of relationship between the partners play an important role in determining the probability of one person (say, a woman or a man) making decisions on their own.

<sup>6</sup>For the purpose of understanding the intra-household decision-making power of women in different informal groups, the degree of bargaining power commanded by a woman in her household and the factors affecting it remain key for this study.

<sup>7</sup>Without getting into the details of an epistemological debate present in the literature on the conceptualization of 'formality' and 'informality' in the Indian labour market; for the purpose of this study, the chapter identifies the words 'formal' and 'informal' for labour markets in the aspects of regulatory, accountability principles.

Moreover, in studies on feminist economics and the economics of family (particularly, those focusing on intra-household gender dynamics in different societies), economists often assign a higher weightage to the status of *material* distribution of economic resources (say, income and accumulation of physical assets) to understand the ‘bargaining’ power of women as against men in a given household.

This framework of assessment, as important as it may be, often ignores some vital *extra-household features* rooted in social norms, ideological perspectives shaping the different social structures of family that define the role of women in it. Some of these *extra-household features* (i.e. social status of family, migration into urban cities, ideological perspectives and informal status of selected group) play a vital role in those working within the informal sectors, where access to basic utilities and material resources is a challenge and where the application of rule of law (in minimizing any social or economic injustices)<sup>8</sup> remains circumscribed.<sup>9</sup>

The study thus seeks to: (a) highlight the role of some key variables, factors involved in shaping a woman’s intra-household bargaining level, and (b) isolate some of the intra-household (i.e. inside the household) and the extra-household features (i.e. outside the household) to include both *material and ideological* perspectives affecting a female domestic worker’s bargaining power (i.e. decision-making abilities). This is done using observational results from a randomized sample of interviews of female domestic workers conducted using a mixed questionnaire (with both subjective–objective questions) across different urban cities in India.

The structure of the chapter is as follows. The first part of the chapter introduces a background situation on the state of affairs for domestic workers working across India, as part of India’s rising informal labour market segment in urban cities. The chapter then goes on to discuss a few aspects of intra-household bargaining power identified as variables for this study. This is followed by an analytical description and findings inferred from the interviews conducted in different urban cities, putting in context the variables identified for this study. In the final part, the chapter mentions some of the limitations faced in this study, followed by a conclusion.

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<sup>8</sup>Socio-economic injustices here may include a breach or subjugation of basic fundamental rights, minimum labour standards, minimum wage requirements, etc. which leads to the exploitation of workers (working within informal sectors).

<sup>9</sup>While there remains a limited focus of the economics literature (owing to limited availability of information on informal employment spaces) on studying the material and ideological aspects affecting the social position of women working in informal economic arrangements in their family, this study finds a convergence between the weightage of extra-household and intra-household factors affecting the relative bargaining power of female domestic workers in their own household (as against other members of the family).

## Domestic Workers Across India

The informal economy constitutes more than half of the non-agricultural employment base in most developing regions and as much as 82% in South Asia, capturing the large share of economic units and workers that remain outside the world of regulated, formalized economic activities and protected employment (Mohan 2017). Keeping aside the complexities involved in measuring informal employment statistics in countries like India (and elsewhere), a recent study by Rustagi (2015)<sup>10</sup> observing the overall informal employment data released by National Sample Survey Office's (NSSO) 68th Round estimates shows how:

79% of the informal workers do not have a written job contract; 71% are not eligible for paid leave; and 72% are not eligible for any social security benefits...and 80% of the workers are engaged in activities which have no union or association. (Rustagi 2015; pp. 1)

Within this rising informal economy base, the domestic work market remains one of the fastest expanding sectors for low-skilled women and men. According to the Final Report of The Task Force On Domestic Workers (2011): a *domestic worker* refers to: 'a person who is employed for remuneration whether in cash or kind, in any household through any agency or directly either on a temporary or permanent, part-time or full-time basis to do the household work, but does not include any member of the family of an employer'.<sup>11</sup>

The type of domestic work for workers is based on the number of hours of work and the nature of employment relationship shared with urban employers. The domestic workers can further be categorized as<sup>12</sup>:

1. *Part-time worker*: A domestic worker who works for one of more employers for a specified number of hours per day or performs specific tasks for each of the multiple employers every day.
2. *Full-time worker*: A domestic worker who works for a single employer for a specified number of hours and who returns to his/her home every day after work.
3. *Live-in worker*: A domestic worker who works full time for a single employer and also stays on the premises of the employer or in a dwelling provided by the employer and who does not return to his/her home every day after work.

The chapter focuses only on *part-time and full-time female domestic workers*. Being part of an unregulated sector, domestic workers are often subjected to social and economic exploitation and discrimination at the hands of their employer. As observed by a 2011 Report published by the Ministry of Labour and Employment (Government of India), the general problems faced by domestic workers include<sup>13</sup>:

- Lack of minimum wages and decent working conditions.

<sup>10</sup>The study by Rustagi (2015) includes data on employment available for workers from both agricultural and non-agricultural sectors.

<sup>11</sup>Source: Ministry of Labour and Employment, Govt. of India. (2011, p. 12).

<sup>12</sup>Ministry of Labour and Employment, Govt. of India. (2011, p. 12).

<sup>13</sup>Ministry of Labour and Employment, Govt. of India. (2011, p. 46).

- No standard uniformity in receiving monetary and non-monetary benefits like leaves of absence etc.
- Violence, abuse and sexual harassment at workplace.
- Exploitation by placement agencies: The domestic workers who come through placement agencies suffer exploitation. Many even get caught in cases of trafficking (see part on placement agencies).

Studies evaluating the socio-economic status of domestic workers in India (Roberts 1997; Neetha 2004; Chandrasekhar and Ghosh 2007; Sampath 2013), broadly highlight the following **four** aspects while discerning the degree of social exploitation faced by domestic workers (especially women) working in urban households across metropolises:

- **Increased rural to urban migration**—Many domestic workers in different urban parts of India (especially the metropolises) are migrants from relatively poor rural areas belonging to socially backward, vulnerable communities with no support system in the city. With low literacy levels, lack of alternative employment opportunities and no state support, this leaves most domestic workers largely vulnerable and at the mercy of urban household employers and middlemen/agents/brokers (who facilitate ad hoc employment opportunities for them).
- **Cultural and economic devaluation of domestic work**—The social perception of domestic work in most parts of the country considers it as *unskilled, low-wage* work for women. This, of course, has a gender perspective attached to it. As Agarwal (1997) argues: ‘There can be, and not uncommonly is, a divergence between what a person *actually* contributes, needs, or is able to do and *perceptions* about her/his contributions, needs or abilities...In particular, a person’s contributions may be undervalued because of her gender or race...The work women do might be labelled ‘unskilled’ simply because of their gender’,<sup>14</sup> their social position in the society and the nature of work undertaken by them. Such social perceptions of female domestic workers further affect their intra-household bargaining power or preferential decision-making capabilities affecting their overall well-being (discussed later).
- **Sexual exploitation and abuse faced by female domestic workers**—The majority of female domestic workers working in urban spaces face high level of discrimination at the hands of urban employers (female and male). Being part of an unregulated, helpless labour market segment, there is mounting empirical evidence documenting a widespread increase in cases of sexual abuse, domestic violence and crimes against women working as domestic workers (Chandrasekhar and Ghosh 2007; Mohan 2017).
- **Lack of distinction in regarding an employer’s household as a work place**—Across India, the house of an urban employer (hiring a domestic worker) is hardly recognized as a workplace for the person working there, making it difficult for agencies to enforce the rights of workers in such unregulated spaces.

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<sup>14</sup>Agarwal (1997, pp. 10).

As a result, the household work (undertaken at an employer's residence) remains difficult to be captured in any official studies on informal employment estimates (Sampath 2013).

While the scope of this study does not go into the details of the nature of exploitation and harassment faced by female domestic workers or the violation of their rights (as done in earlier chapters of the edited volume),<sup>15</sup> parts below focus more on the female domestic workers' own household set-up. Some of the observations made above from the existing literature on domestic workers are further validated from the results and analysis of the study.

## Intra-household Gender Dynamics and Bargaining Levels

The role of households/families holds atomistic importance in the economic analysis on distribution, and optimization of limited economic resources for the overall well-being of women and men across societies. Within households, we witness varying conflicts in the pattern of preferences and interests shared by women, men and children (assumed to be the basic constituents in a household/family). In a traditional intra-household bargaining approach, one would expect the women and the men to mutually *cooperate* (via pooling of income) in spite of any degree of conflict, to maximize their utilities in a collective way.

However, as mentioned earlier, we often observe a higher degree of *non-cooperation* between a woman and a man in families within different societal groups (owing to differences in allocation of economic resources or due to social norms). As the relative bargaining power of a woman inside her family remains lower to the bargaining power of a man, this affects her ability to cooperate or demonstrate an equal say in the intra-household decision-making set-up for her well-being. In such *non-cooperative* models, most presumptions of *Pareto-efficiency*<sup>16</sup> on *income pooling* at an intra-household level fall from the scope of analysis, leading to a need for accommodation of differed, gender-based, individualized patterns of bargaining power by members of a particular group.<sup>17</sup>

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<sup>15</sup>There is hardly any exclusive literature studying the intra-household decision-making abilities of women working as domestic workers. While most of these women earn their monthly income independently through the services offered as a domestic worker (part-time or full-time), earning this independent income or having financial independence may have little effect on their intra-household bargaining position (i.e. in terms of their decision-making capabilities).

<sup>16</sup>*Pareto-efficiency* is a condition used in welfare analysis where resources are said to be allocated or distributed (within a group) in an efficient way, if and only if, any one member's situation cannot be improved without making another member's situation worse off. The condition of Pareto-efficiency thus does not imply fairness or equality between members of a particular group.

<sup>17</sup>Also, the informational basis of comparing two independent households and their well-being in a given society not only embodies the material aspects of well-being (income, accumulation of physical assets) but also includes certain ideological perspectives (embedded in the social structure of the households) that endogenously affect distribution of economic resources between women and men (regardless of whichever sector of employment they may be positioned in).



With the application of more recent alternative models in this regard (Folbre 1986, 1998; Sen 1981, 1983, 1990; Agarwal 1990, 1994; Doss 1996), we now have a much better understanding of additional factors involved (in shaping the *bargaining power* of women in family arrangements) that goes beyond the *material* aspects to accommodate for the role of social norms, ideological perspectives and affecting her intra-household and extra-household decision-making capabilities.

### ***Variables Shaping the Intra-household Bargaining Power of Female Domestic Workers***

There can be a wide range of factors that can affect a woman's bargaining power at an intra-household level. While some of these remain more quantifiable, such as a woman's income and ownership of economic assets (example, land and house); some are less quantifiable, namely *social norms* (shaped by local institutions and traditional practices) and *ideological perspectives* (example, patrilineal family arrangements), both affecting a woman's intra-household (within the family) and extra-household (outside the family) decision-making capabilities. In discussing the case of rural women in South Asia, Agarwal (1997) in her study, argues<sup>18</sup>:

"A person's bargaining strength within the family vis-à-vis subsistence needs depends on following eight factors:

- (a) Ownership of and control over assets, especially arable land (in rural areas);
- (b) Access to employment and other income-earning means;
- (c) Access to communal resources such as village commons and forests;
- (d) Access to traditional social support systems such as patronage, kinship and caste groupings;
- (e) Support from non-governmental organizations (NGOs);
- (f) Support from the state;
- (g) Social perceptions about needs, contributions and other determinants of deservedness; and
- (h) Social norms".

The relevance of the above factors allows a woman's ability to "fulfil subsistence needs" both within and outside the family (Agarwal 1997). In this way, these factors help in combining the effects of both the quantifiable aspects (denoted by factors (a), (b), (c)) and not-so quantifiable aspects (denoted by factors (d), (e), (f), (g), (h)) on the bargaining power<sup>19</sup> of women at an intra-household and extra-household level (in terms of preferential decision-making). Also, there remains a possibility of reverse causality between the functions of the quantifiable and not-so quantifiable

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<sup>18</sup>Agarwal (1997, pp. 8–9).

<sup>19</sup>In the analytical observations documented in this study, an increase in bargaining power of women (female domestic workers) within their households remains directly proportional to the degree of preference they have in terms of the variables identifies (i.e. spending allocation preference, fertility preference, children's education, children's marriage).

factors, i.e. a woman with the help of either (*d*), (*e*), (*f*), (*g*), (*h*) can command a higher bargaining power and level of independence in securing (*a*), (*b*) and vice versa. This is vital from a policy perspective and warrants a deeper understanding on the relationship of each of these factors in promoting, safeguarding the overall well-being of women and their free agency<sup>20</sup> in different social arrangements.

The four relatively more important variables or factors emerging from the existing literature on determining a woman's intra-household position focus on her bargaining power (or independent decision-making) in areas of consumption expenditure, fertility preference, child's education and marriage decision. As part of this study's primary research, the basic structure of evaluation uses these **four** variables (described below) for female domestic workers<sup>21</sup> in the questionnaire of interviews conducted to explain the extent of their intra-household bargaining position:

- Spending Allocation Preference (for intra-household consumption purposes)
- Fertility Preference (i.e. in having a child or not)
- Child's Education Preference (i.e. in educating a child at a particular institution)
- Child's Marriage Preference (i.e. in taking a decision on a child's marriage)<sup>22</sup>

**Spending Allocation Preference:** Sen (1981) in conceptualizing an "entitlement approach to famine" illustrated two factors that allow a person within a family to meet her/his subsistence needs (e.g., food, healthcare and rent cost for housing): *endowments* (i.e. what a person owns, such as physical assets and labour power) and *exchange entitlement mapping* (i.e. "the exchange possibilities that exist through production and trade, which determine the consumption set available to a person", given her/his endowments).

The objective of knowing the *spending allocation preference* is to somewhat identify an exchange entitlement mapping in a female domestic worker's own household and understand the extent of her role in contributing towards this entitlement mapping. We get this by accounting for the percentage distribution of monthly expenses from a female domestic worker's monthly income towards her household's overall—*food expenses, healthcare cost, rent cost* (if her house is on rent), *child's/children's education tuition* (if child/children is going to school) and so on.

This helps us in getting a quantifiable picture on the relative contributory role a woman has in taking decisions with respect to her household's basic expenses vis-à-vis her husband's contributory role. The *spending allocation preference* highlights one aspect of a woman's bargaining for subsistence within her own household.

**Fertility Preference:** While one may use incomes, commodities, access to economic resources as strong material basis of well-being for individual persons within a family, in case of women, a key behavioural factor affecting their overall well-being within the family remains closely related to the degree of preferential say they

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<sup>20</sup>Check Mohan (2017) for the difference between the well-being and agency aspects of freedom of women.

<sup>21</sup>We assume the case of only those female domestic workers who have their own independent household residence (with a spouse and children) without stay in residence with their employer (or at their place of work).

<sup>22</sup>We assume here that a female domestic worker has a child (aged 20 years or more).

have in the decision on having a child (Sen 1983, 1990). In a recent study (Mohan 2017), the author discussed the importance of fertility preference in context to its relationship with literacy and employment opportunities for a woman, as a condition for her overall well-being inside or outside a household.<sup>23</sup>

**Child's Education Preference and Child's Marriage:** These two variables demonstrate the degree of freedom and bargaining power commanded by a female domestic worker in her own household, in context of promoting or safeguarding her own child's well-being (assuming she has a child).

A child's education being critical for her/his own future well-being remains often related to the woman's motivation to work as a domestic worker in different households, i.e. in earning the extra income for affording the child's education. This is especially true for circumstances where a woman's husband pools little or no money towards their child's education and the incidence of financial burden falls more or less on the woman to manage her child's education expense (during the time the child goes to school). In such a case, the woman's role in having a greater say in the decision of educating her child even after a certain level (say, for secondary degree education after high school) is key for the child's own well-being.

The latter variable (on child's marriage preference) attributes a preferential say of a woman in deciding her child's own marriage (assuming the child to be above 20 years old and willingness to marry). While decisions on marriages in most rural societies across India reflect a union between two family arrangements (shaped by social norms, traditional value systems), the decision for a person to marry (whether a girl or boy) remains largely centred in the hands of their respective family, as a collective family group (Agarwal 1990, 1997).

Assuming the existence of such social arrangements and family practice to be true<sup>24</sup> in the households of female domestic workers (interviewed for the study), the focus was to observe: to what extent the female domestic worker on her own tends to command an equal or lesser preferential say in her child's decision to marry, as compared to her husband or/and extended relatives?

While social norms and perceptions play a vital role in the family arrangements of children (assumed to be at a time when they are about to get married), it was observed for most women interviewed that in their own children's marriage, the woman (i.e.

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<sup>23</sup>While a utilitarian conceptualization of well-being (assessed via a quantifiable scale of material pleasure) fails to encompass such an aspect in its scope, we include this aspect as a variable shaping a female domestic worker's intra-household bargaining power (i.e. decision on having a child or not). Check Mohan (2017) for a detailed explanation on this.

<sup>24</sup>In the interviews of female domestic workers, we observed that the children of these workers (aged 20 or more) tend to have less or no say in their decision to get married and the decision remains conditionally dependent on the family of the respective children (including the woman, her husband and extended relatives).

female domestic worker) tends to have a much lesser say (as observed in a few patrilineal and patriarchal family arrangements of interviewed domestic workers).<sup>25</sup> This raises an interesting point, as argued earlier by Agarwal (1997), on the role of social *perceptions* in a woman's bargaining power.<sup>26</sup>

### ***The Weighting of Variables: Do all Variables Carry Equal Weight?***

It is quite evident that each of the variables identified above does not affect a female domestic worker's intra-household bargaining power (linked with her decision-making capabilities) to an equal extent. While having an independent financial position with an earning may give the woman a greater decision-making preference in making spending allocation (for livelihood purposes), it cannot be seen to directly affect her preference to have a child (or not have one) or any other variable. This observation (as discussed latter) is quite an anomaly seen in the case of female domestic workers as against other income-earning female groups (discussed in earlier studies).

At the same time, it would be unfair to attach any standardized weight of importance to any one variable. In the analysis put forth, there is an understanding to allow for a degree of subjectivity to remain pertinent (discussed as *extra-household factors*), given the level of dynamism present in social contexts of interviewed women and their family set-up. It is thus vital to isolate each variable to its own independent merit while providing our analytical observations in the part below.

### **Analytical Findings (Variable-wise)**

In observing the analytical findings from the 46 interviews conducted in different urban cities across India, there is a variable-wise focused explanation to underline some of the key observations from the interviews conducted. The city-wise sample size of interviews of female domestic workers includes: Tamil Nadu (Chennai)—5 interviews; Haryana (Sonapat)—13 interviews; Rajasthan (Jaipur)—10 interviews; Maharashtra (Mumbai)—5 interviews; Punjab (Chandigarh)—7 interviews, and Delhi—6 interviews.

Box Table 1 and Box Table 2 provide aggregate details of the profile of all female domestic workers interviewed, along with the details of their work, nature of services

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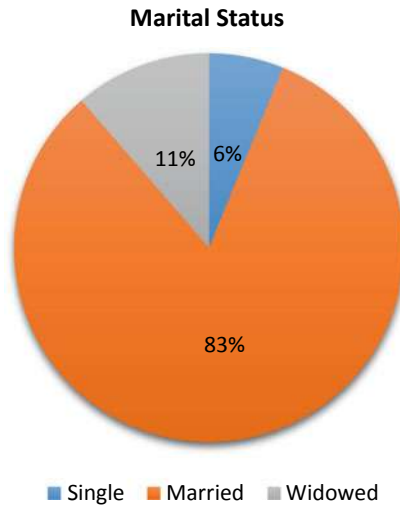
<sup>25</sup>This also seeks to highlight the degree of interdependence between a female domestic worker's own economic freedom (having independent income, access to other economic resources) with her social freedom.

<sup>26</sup>As Agarwal (1997) states in her paper, 'There can be, and not uncommonly is, a divergence between what a person *actually* contributes, needs or is able to do, and *perceptions* about her/his contributions, needs or abilities...'.  
'

offered and monthly income earned. Box Table 3 reflects variable-wise aggregated responses that were identified for the study. The following sub-category explanation of 'Analytical Observations' is of pertinence owing to spatial differences highlighted in the responses sought (particularly in Box Table 2).

**Box Table 1: Profile of Respondents (Female Domestic Workers)**

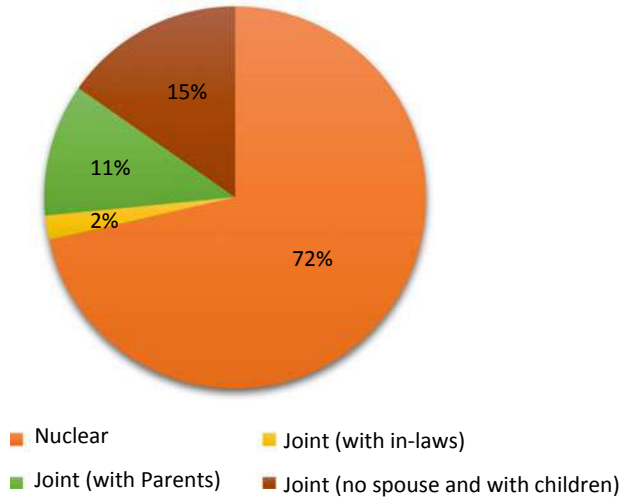
(a) **Marital Status**



83% of the respondents interviewed were married. In case of two respondents, one was divorced and had a child (in Mumbai), while another respondent was married twice and had two children (Jaipur).

(b) **Nature of Intra-household Family**

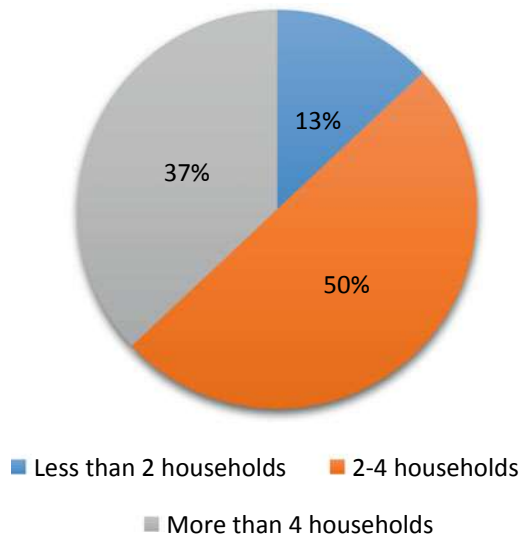
**Nature of Intra-Household Family**



72% of the female respondents were staying in an independent household with their spouse and kids only. 15% stayed with their in-laws and kids and 11% stayed with their parents only.

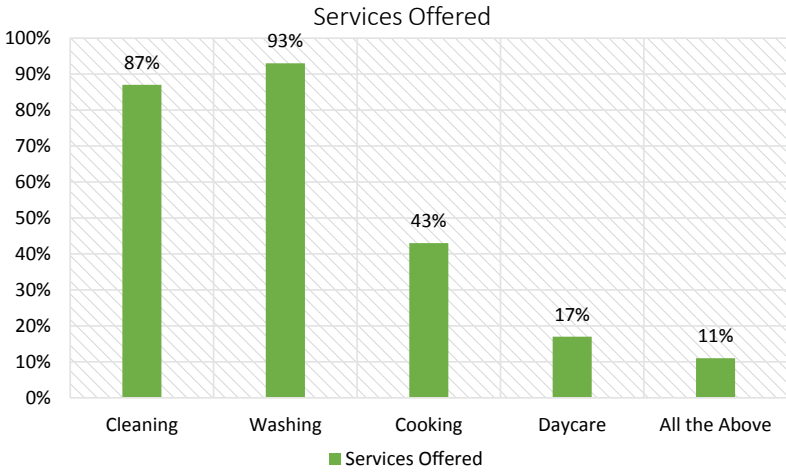
(c) **Average Number of Employer Households (As Work)**

**Average Numer of Households (As Work)**



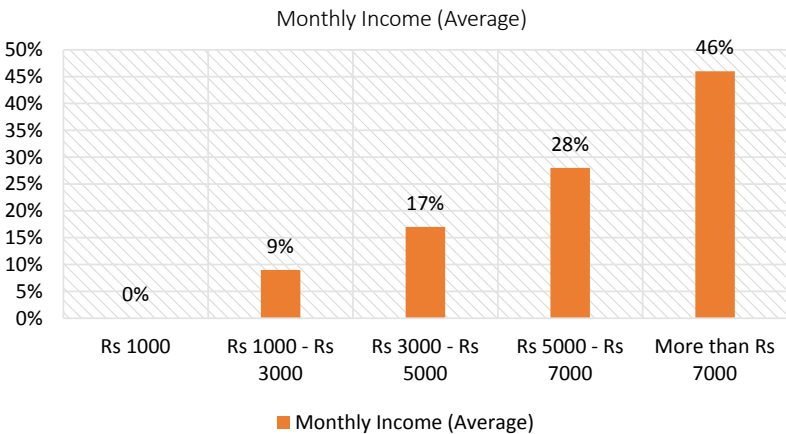
50% of the female respondents were working on an average 2–4 households as their place of work while 37% were working in more than 4 households. Only one respondent (in Mumbai) worked as a full-time-domestic worker in one household.

**(d) Nature of Services Offered as a Domestic Worker**



Most female respondents interviewed prefer performing two to three services together at their working household and are paid according to each of the services offered.

**(e) Total Monthly Income (Average)**

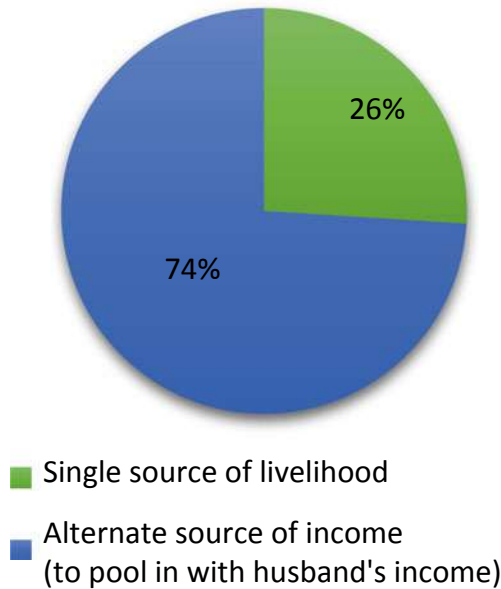


46% of the female respondents earn more than Rs. 7,000 as monthly income for the services offered. In Sonapat (Haryana) and Mumbai (Maharashtra), it

was observed that all respondents on an average earn more than Rs. 7,000 per month as domestic workers.

(f) **Motivation to Work as a Domestic Worker**

**Motivation to Work as a Domestic Worker in the city**

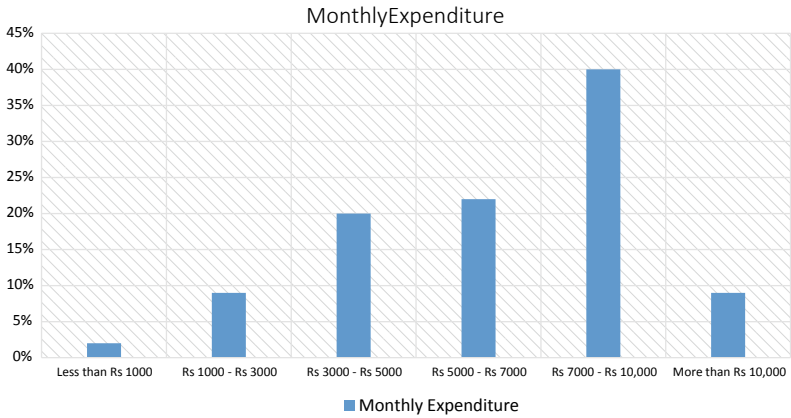


As observed from the data collected, most respondents work as domestic workers to pool in their income with their husbands to manage household expenditure. 74% of the female respondents chose domestic work due to unavailability of an alternative employment opportunity, and to meet their household expenses use the income from domestic work for supplementing the household income; while 26% chose domestic work as that is only source of occupation for subsistence and livelihood means available to them. In Chennai, it was noted that the husbands of most respondents were addicted to alcohol and contributed nothing towards household expenditure. As a result, most respondents (under the 26% group) worked as domestic workers and saw it as a single source of livelihood.

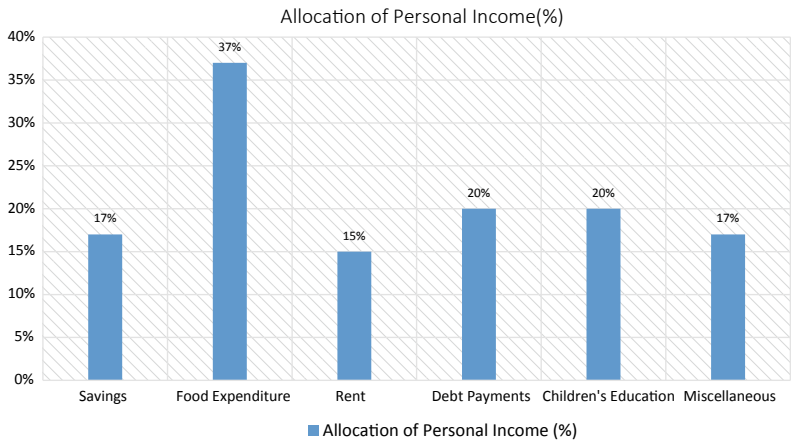


**Box Table 2: Intra-household Allocation of Income Expenditure**

**(a) Household Monthly Expenditure**

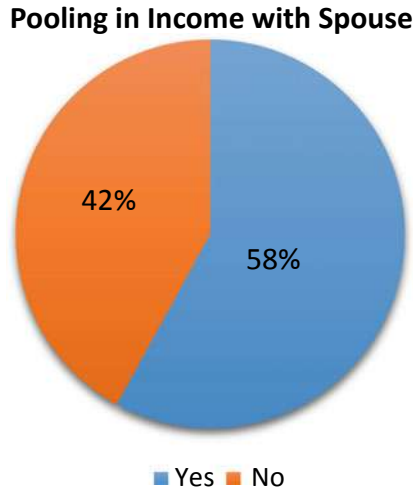


**(b) Allocation of Personal Income towards Intra-household Expenses (%)**

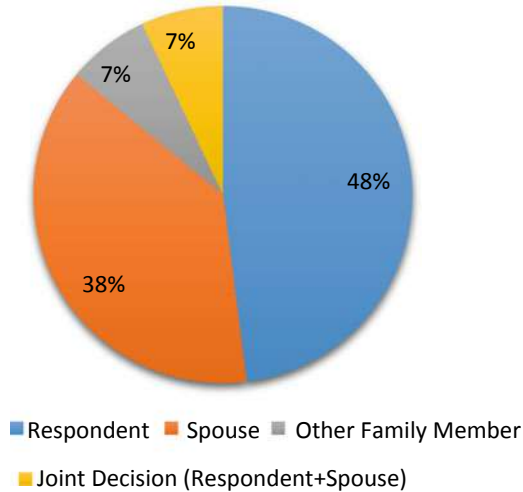


Irrespective of the city, the overall percentage allocation towards each identified component of household expenditure (for each respondent) was similar. More than 37% of the overall monthly income expenditure of female domestic workers was utilized for their household food requirements and 20% towards children's education.

(c) **Percentage of Respondents Pooling in Income with Their Spouse**



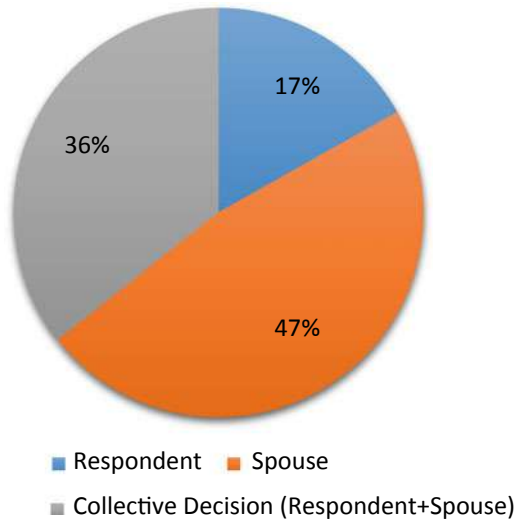
In terms of the overall responses collected on the question of how many female domestic workers received financial support from their respective spouses in managing their intra-household expenditure needs, 58% consented towards receiving some supports towards pooling in their income, while 42% received no support from their respective spouses. One of the most common reasons cited by respondents (not pooling in income with spouses) was alcohol addiction where spouses of female respondents (especially in Chennai, Delhi, Sonapat) faced this problem, managing most of the household expenditure on their own.

**Box Table 3: Variable-Focused Responses****(a) Preferential Say of Respondents in Spending on Intra-Household Budget (Spending Allocation)****Spending Allocation Preference**

All respondents interviewed in cities of Chennai and Mumbai were found to be solely responsible for taking all household decisions on expenditure allocation. Overall, 38% of the female respondents (in spite of earning more than Rs. 7,000 or more monthly) had no preferential say in their intra-household consumption spending decisions (as against their spouse). In the city of Chandigarh, spouses (husbands) of female respondents had greater say in household expenditure allocation (irrespective of who contributed more money in the household budget).

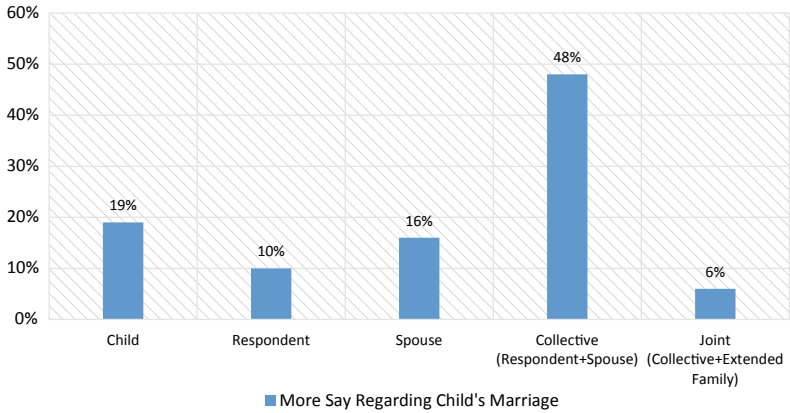
(b) **Preferential Say in the Decision of Having Children (Fertility Preference)**

**Fertility Preference**



47% of the female respondents indicated that they have little or no preferential say in the decision of having a child. In the city of Chandigarh, it was observed from the interviews conducted that there was more of a collective mutual decision-making process (including the respondent and her spouse) in having a child. In Sonapat and Delhi, the spouse had a greater say in having a child (as against the respondent). However, in Chennai, the respondents demonstrated a greater say in having a child (fertility preference—as against their spouse).

(c) **Preferential Say in a Child’s Marriage**<sup>27</sup>



In the case of most respondents, particularly those residing in Chennai and Mumbai, the decision regarding their child’s marriage was observed to be dependent more on the collective decision of the respondent and her spouse. In case of Sonapat and Delhi constituting for 22% of the overall responses here, the respondents seem to have a limited say (on their own) in their children’s decision to marry. The decision in these cities was made by either spouses or the members of joint family (i.e. in-laws and other relatives). Overall, 48% of the respondents agreed that the decision on their children’s marriage was jointly taken with the spouse while 19% agreed that the decision rested more or less on the choice of their adult children, which means that only in 6 out of 33 interviewed cases, adult children (above the age of 20) being able to decide by themselves on their decision to marry (i.e. including 2 such cases from Delhi, 1 such case from Jaipur and 3 from Chandigarh).

**Analytical Observations**

Without reiterating the micro-details made in the observations column in the Box Tables above, what is evident from the study and interviews conducted across different urban parts of the country is that it is extremely difficult to model a general framework for assessing a female domestic worker’s intra-household bargaining or decision-making capabilities (on a given pre-identified set of factors). The assumptions on common utility function or pooling in of income (between the woman and her husband) have a marginal role in influencing the woman’s intra-household bargaining power, i.e. her decision-making abilities, allowing us to discount any unitary

<sup>27</sup>If the child of the respondents is more than 20 years old.

method approach or application for studying her intra-household bargaining power, which, as we see here, is shaped by both intra-household and extra-household factors.

For further illustrative evidence to support this, here are some observational statistics drawn from the 46 interviewed female domestic workers, on the question:

*Being financially independent (or since working as a domestic worker), do you think you have an equal or greater say in your household decision-making abilities<sup>28</sup>?*

- (a) 4 respondents (9% overall) said 'No', feeling that they have little or no say in the household decision-making process.
- (b) 9 respondents (20% overall) said that they take all the household decisions (based on the variables given and questions asked).
- (c) 5 respondents (11% overall) said that they have greater say in household spending allocation but limited or no say (as against their spouse) in their children's education and/or children's decision to marry.
- (d) 23 respondents (52% overall) said they have support of their spouses in taking household decisions (in a collective way).
- (e) Since starting to work as a domestic worker in the city, almost 70% of the respondents agreed that their decision-making abilities with respect to household spending allocation preference had improved, also allowing them to spend more on their own clothes, personal hygiene and personal items.
- (f) In terms of fertility preference, there was little or no difference in the bargaining power of respondents in the Northern cities (Chandigarh, Jaipur, Delhi and Sonapat), while in the Southern part (Chennai) and in Mumbai, respondents had relatively a greater say in having a child.

Observation (e) here highlights an important aspect of how an increase in financial independence allowed most female domestic workers to take better personal care and have a greater say in intra-household spending allocation. This observation is in alignment with the results from earlier studies (Agarwal 1994; Sen 1990), where the relative increase in financial income-earning opportunities amongst women (in formal or informal sectors) positively impact their intra-household bargaining power.

Observation (f), however, points to a different sociological finding, where, in spite of having a greater say in household spending allocation decisions, most female domestic workers (in Northern parts of the country) have little or no say in the decision of having a child (regardless of their economic position in the family). This is observationally true due to the presence of various geo-spatial sociological arrangements (based on social norms, family values and ideological perspectives), qualifying as part of extra-household features (i.e. features present as an influential factor outside any given household).

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<sup>28</sup>Taking into consideration all the variables involved in our study.

Further, below are some key points of observation, qualifying as interesting areas of research that remain centred to the case of domestic workers as against other working groups (i.e. within the informal sector).

- i. Most of the respondents (female domestic workers) started working as domestic workers after getting married and moving to the city with their husbands or family members. The motivation to work as a domestic worker was primarily to earn additional income, owing to the weaker financial circumstances at their respective household. Thirty-four of the respondents (73%) interviewed are migrants from other cities, rural areas and 12 belonged (27%) to the same city. These observations validate one of our previous points highlighting the socio-economic challenges faced by domestic workers across India.
- ii. The income charged for the number of services offered by respondents (across all cities) depends on the size of the employer's house, the total number of household members and negotiations with the employer (conditional on total number of domestic workers in the residential space, union-based service charges). The presence of informal labour union (amongst female domestic workers working in a residential space) allows them to negotiate a good monthly wage for the services offered.
- iii. On being asked if the respondents would prefer being part of a formal, organized group (regulating their services, income and rights as domestic workers), 27% of the respondents showed interest in being part of such a forum while 73% didn't show much interest, reflecting a lack of awareness on rights-based issues.
- iv. A high prevalence of alcoholism present amongst the spouses of respondents (in cities of Chennai, Sonapat and Delhi) forces respondents to increase the total number of hours of work which negatively impacts their own health and overall well-being.
- v. Higher female literacy (amongst female domestic workers) combined with a small-nuclear family (comprising of a spouse and less than two children) in urban cities like Mumbai, Chandigarh and Chennai reflects a greater decision-making ability amongst women in areas of fertility preference and children's education.
- vi. In most interviews conducted (across cities), it was observed that as part of the household spending allocation preference, female domestic workers preferred to save more money (as against their spouse) for future contingent expenses. At the same time, almost 70% of the household budget towards children's education and overall medical expenses were contributed by women alone.

Observation (i) raises a key feature that shapes the family arrangements for most female domestic workers in urban cities. A lack of alternative employment opportunities within rural areas pushed most of the rural families to migrate into the nearest urban city in search of better livelihood opportunities. Almost 73% of all interviewed female domestic workers were a part of this migrating group of families who under-

took domestic work for managing basic survival and livelihood. This was seen as a major factor in affecting their motivation to work as domestic workers.

Observation (ii) relates to a classical problem faced by most informal workers (as raised earlier in the chapter) where in the absence of being covered or governed by state regulation on minimum labour standards and minimum wage laws, most domestic workers find it difficult to collectively *bargain* and negotiate a fair wage for the services they offer. The high variance seen in the income earned by female domestic workers across different urban cities points out, how in selected areas within cities like Mumbai, Chandigarh and Jaipur (as against other cities), there is a stronger informal union (amongst domestic workers in a given residential area)<sup>29</sup> that enables them to negotiate a monthly income of their choice. It was in these cities that around 27% of the respondents (as noted in Observation (iii)) seemed more aware of their rights to negotiate or demand for a fair wage (because of informal union groups created by themselves) and preferred to be a part of a formal group<sup>30</sup> or an organized portal for domestic workers that helps them in regulating a fixed wage structure in alignment with the type of services offered, and protecting their rights.<sup>31</sup>

Observations (iv) and (vi) reflected a common pattern in the households of most respondents (especially across Chennai, Delhi and Sonapat) where spouses of the female domestic workers were found to contribute very little towards household decisions (across all variables) nor offered any financial assistance to respondents (with no opportunity of *pooling of income* to manage household expenses and children's education) and were alcoholics. While this objectively increased the concerned respondent's intra-household bargaining power (on a whole), it was not seen as a desirable outcome by the interviewed respondents, as it often pushed them to increase their hours of work (at their employer's household) and manage more than 70% of all household expenses. In fact, as mentioned earlier (Sampath 2013), the nature of domestic work (in spite of being informal as per official employment records) is hardly perceived to be seen as work at all.<sup>32</sup> The hours of work spent at the employer's household by female domestic workers is seen to be exclusive

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<sup>29</sup>Such an informal union (formed in most residential colonies) helps in minimalizing the exploitation of female domestic workers working there and further ensures an annual income revision (up to a range of 10%) in selected residential areas. Having said that, there is no formal space for negotiating a fair, decent wage for domestic workers across cities (including interviewed areas) which subjects the female domestic workers to face exploitative conditions (at work).

<sup>30</sup>The notion of a formal, organized group was identified given the recent role played by some small-scale entrepreneurial e-initiatives like *mybai.com* and *Gharkamai.com* (in Mumbai and elsewhere), providing a formal, regulated, socially protective platform to domestic workers for improving their work conditions, negotiating a decent wage while safeguarding their fundamental rights.

<sup>31</sup>In Mumbai, there are already common portals (with online presence) like *Bai on call*, *BookMyBai*, *Taskbob* and many more that offer help to domestic workers in finding work in different parts of the city and protect them against any form of exploitation (faced at the workplace) by reporting any complaints (raised by domestic workers) to concerned authorities.

<sup>32</sup>In the formal employment statistics, household work (primarily performed by women) is seen in the category of 'self-employed'. In case of the unorganized, informal sector, there is no process to see domestic work as organized work, which makes the measurement of overall labour productivity a complex exercise.



to the traditionally understood nature and value of work within labour productivity standards (see Mohan 2017).

In our case, as highlighted in the column of observations in Box Tables above, in addition to the problem of viewing domestic work as organized work, there seems a need to give equal or greater importance to the role played by *extra*-household factors like: social norms (prevalent in Southern parts of the country as against the North and the West); ideological factors on woman's role in family arrangements<sup>33</sup> (diverging across Southern and Northern parts of the country); the nature of work (largely informal and unregulated in our case); or the geo-spatial positioning of women (in urban spaces as against rural areas), in affecting her relative decision-making power at an intra-household level.

These extra-household factors go beyond an exclusive focus on the monthly income earned by the female domestic workers. The results attach less relative importance to the amount of income pooled in by the female domestic worker (with her spouse) towards her household which is a key independent variable in analysing a woman's intra-household bargaining power. Further, most of the above observations help us gauge the substantial degree of sub-optimal conditions present in the household dynamics of domestic workers and the economic and social position of women (working as domestic workers), within and outside their households.

The analysis provided here validates some of the earlier highlighted challenges pertaining to domestic workers across India. The primary research done here does, however, give way for further research investigation in studying the socio-economic position of women who work outside the regulated, formal sectors of the economy. Also, those who seek to understand the gendered nature of intra-household bargaining power may do well to go beyond a given set of pre-defined modelled factors (say, assumptions from unitary models, common utility functions and objective socio-economic indicators) and widen the informational domain of assessment by including more subjective information (in form of extra-household features) that affect any woman's intra-household bargaining power.

## Limitations to the Study and Conclusion

Any attempt to undertake a multi-variate primary study involving subjective and objective frameworks of assessment across different spatial areas is bound to face strong resistance in its method of analysis. An acknowledgement of some of the main limitations of this study (given below) is therefore important in understanding the scope of the author's analysis itself:

- The overall randomized interview samples, i.e. 46 across all urban cities (Jaipur, Chandigarh, Delhi, Sonapat, Chennai and Mumbai), are disparately segregated across cities. One may identify the city-wise sample to be relatively low in some

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<sup>33</sup>Refers to the social, cultural factors influencing the decision-making preferences of females–males from an intra-household perspective.

- cases, but detailed questions and responses on subjective and objective indicators help us still in giving a robust, circumstantial trend in the situation of female domestic workers in their own households and on the nature of domestic work.
- The part of the study on documenting the income earned by female domestic workers only includes income earned in cash, excluding any in-kind payments or services offered by the employer (in form of food, clothing and other utilities).
  - The quantifiable indicators present the mean (average) and percentage figures. For additional work on the data, standard deviation on each city-wise responses can give further insight into city-wise trends in gendered nature of intra-household bargaining power of respondents. Discreet levels in primary data collection with different sample sizes made this difficult. There was also a strong resistance seen from respondents in getting access to information on their intra-household expenditure which made validation of data difficult in some cases.
  - With limited city-wise sampling, one can argue that any intra-city variations owing to the geo-spatial positioning of the respondents' household (i.e. in the middle of the city vs. in the peripheral, outskirts part) will be difficult to ascertain. To capture that, it would be useful to carry independent surveys within each city to validate the findings noted here.
  - Questions on fertility preference, decision-making abilities on children's marriage invoked stiff initial resistance from female domestic workers in Sonapat, Delhi and Chandigarh and required a longer time span for interviewers to seek responses to these questions.

## Conclusion

Through a detailed analysis undertaken for female domestic workers (as part of India's large informal economy base) across different cities in India, one finds the presence of multifaceted, intertwined crescendos operating as part of *intra-* and *extra-*household features (i.e. both within and outside their household) that significantly affect their social and economic position in their own household and the society at large. While the analysis drawn here is studied only in terms of selected variables that affect a female domestic worker's bargaining power (i.e. in terms of her household spending allocation preference; fertility preference; children's education and marriage), the study emphasizes the need to widen our informational domain of analytical factors pertinent to the theme of studying the women's intra-household decision-making abilities within unorganized, informal sectors (i.e. the domestic worker base across India). This includes accommodating for various extra-household features (i.e. social status of family, migration into urban cities, ideological perspectives and informal status of selected group) that affect the well-being of those working outside the formal, regulated sectors of the economy.

Beyond this, the observations discussed here offer insights in substantiating the case for enabling a rights-based policy discourse, aimed at improving the overall well-being of female domestic workers (in their own households) and protecting their rights. There remains an urgent need for policy makers, agencies of the state (including non-state actors) to use some of the empirical details highlighted here to take the scope of this analysis further in formalizing means of social justice, ensuring basic standards and rights for domestic workers who currently lie outside the domain and means of institutional justice.

## **Appendix**

See Tables 1 and 2.

The tables below provide information as per each variable (identified in Part II) that highlights the degree of respondents' bargaining power, i.e. preference in intra/extra-household decision-making (in her own household) (Tables 3, 4 and 5).

**Table 1** Profile of respondents (female domestic workers)

Aggregate profile of female domestic workers	Mean (average) figure (out of 46)	Percentage (%)	Key observations
<b>Education</b>			
- Illiterate <sup>a</sup>	27	59	Amongst the total number of female domestic workers interviewed, we observed a higher literacy level amongst domestic workers in Jaipur (Rajasthan) and Mumbai (Maharashtra)
- Primary schooling (below grade Xth)	12	26	
- Grade Xth pass	4	9	
- Grade XIIth pass	3	6	
<b>Marital status</b>			
- Single (not married)	3	6	In case of two respondents, one was divorced and had a child (in Mumbai), while another respondent was married twice and had two children (Jaipur)
- Married	37	80	
- Widow <sup>a</sup>	5	11	

(continued)

**Table 1** (continued)

Aggregate profile of female domestic workers	Mean (average) figure (out of 46)	Percentage (%)	Key observations
Number of family members (in respondents' own household)			
- Two (respondent and spouse)	4	9	Out of the total sample interviews (46) - 32 (70%) of the total female respondents had a nuclear household set-up, i.e. had one spouse and two or more children - 1 (2%) of the total female respondents had her in-laws (father and mother) staying in the same household as spouse and children - 5 (11%) of the total female respondents were staying with her own parents (in which, three of them being single and one divorced) - 7 (15%) of the total female respondents were widows and two <sup>a</sup> had no spouse living in with them)
- Three (respondent, spouse and one child)	9	20	
- Four (respondent, spouse and two children)	9	20	
- Five (respondent, spouse and three children)	8	17	
- More than five (respondent, spouse, more than two children and relatives)	16	35	
Number of respondents' children (living in the household)			
- One	6	13	
- Two	12	26	
- Three	11	24	
- More than three	13	28	
- No children	4	9	

<sup>a</sup>In Mumbai, there are already common portals (with online presence) like *Bai on call*, *BookMyBai*, *Taskbob* and many more that offer help to domestic workers in finding work in different parts of the city and protect them against any form of exploitation (faced at the workplace) by reporting any complaints (raised by domestic workers) to concerned authorities

**Table 2** Information on respondents' job profile and income data

Job profile (as domestic worker)	Mean (average) figure	Percentage (%)	Key observations from sampled responses
Number of years of work as a domestic worker (full-time or part-time)			
- Less than 1 year	2	4	
- 1-2 years	2	4	
- 2-4 years	6	13	
- More than 5 years	36	78	
Average number of households (as work)			
- Less than 2	6	13	
- 2-4 households	23	50	
- More than 4 households	17	37	
Nature of services offered as domestic worker			
- Cleaning	40	87	
- Washing	43	93	
- Cooking	20	43	
- Day care	8	17	
- All of the above	5	11	
Number of hours of work (per day) as a domestic worker in each household <sup>a</sup>			
- 2-4 h	33	80	
- 4-6 h	5	12	
- More than 9 h	1	2	

(continued)

Only one respondent (in Mumbai) worked as a full-time-domestic worker in one household. The maximum respondents worked in two to four households each on a daily basis

Most respondents prefer performing two to three services together and are paid accordingly

In case of two respondents in Mumbai, it was observed that they work in more than three households every day with a maximum of one hour at each household

Table 2 (continued)

Job profile (as domestic worker)	Mean (average) figure (in Rs.)	Percentage (%)	Key observations from sampled responses
Charges levied on each of the services offered (in Rs.)			
- Cleaning	600		In Chandigarh (Punjab), rates for each service across most residential, urban spaces were found to be fixed (cleaning: Rs. 500; washing: Rs. 1000; dusting: Rs. 700)
- Washing	900		
- Cooking	1500		
- Day-care	2500		
Total monthly income (average)			
- Rs. 1000	None	None	In Sonapat (Haryana) and Mumbai (Maharashtra), it was observed that all respondents on an average earn more than Rs. 7000 per month as domestic workers
- Rs. 1000-3000	4	9	
- Rs. 3000-5000	8	17	
- Rs. 5000-7000	13	28	
- More than Rs. 7000	21	46	
Mode of payment (monthly)			
- Cash	46	100	All respondents receive their monthly payments in cash mode only (irrespective of city)
- Cheque	None		
- Credited into account (net banking)	None		

(continued)

**Table 2** (continued)

Job profile (as domestic worker)	Mean (average) figure	Percentage (%)	Key observations from sampled responses
Motivation/reason to work as a domestic worker			
- Single source of livelihood	12	26	As observed from the data collected, most respondents work as domestic workers to pool in their income with their husbands to manage household expenditure. In Chennai, it was noted that the husbands of most respondents were addicted to alcohol and contributed nothing towards household expenditure. As a result, most respondents worked as domestic workers and saw it as a single source of livelihood
- Alternative source of income (to pool in with husband's income)	34	74	
Mode of transport taken to work			
- Public mode of transport (bus)	4	9	While most respondents stay near to their place of work (residential colony) and prefer walking, in Chennai, most respondents (staying far) preferred taking the public transport (bus) to work
- Personal mode of transport (cycle)	3	7	
- Walking	31	70	



**Table 3** Data on *spending allocation preference*

Questions	Mean (average) figure	Percentage (%)	Key observations
What is your overall total monthly expenditure for your family? (in Rs.)			
- Less than 1000	1	2	
- 1000–3000	4	9	
- 3000–5000	9	20	
- 5000–7000	10	22	
- 7000–10,000	18	40	
- More than 10,000	4	9	
How do you allocate your overall monthly personal income? (%)			
- % towards saving		10–20	Irrespective of the city, the overall percentage allocation towards each identified component of household expenditure (for each respondent) was similar
- % towards food expenditure		35–40	
- % towards rent		15	
- % towards debt payments (loans, etc.)		20	
- % towards children's education		20	
- % towards medical/miscellaneous expenses		15–20	

(continued)

Table 3 (continued)

Questions	Mean (average) figure	Percentage (%)	Key observations
Do you receive any cash or subsidies (in kind) from the government (state funded or centrally funded)?			Two of the respondents in Haryana received subsidies for cooking gas (LPG) while three others (in Chennai and Mumbai) received subsidy in form of ration and food grains (as part of the public distribution system)
- Yes	5	11	
- No	41	89	
What is the proportion of your monthly expense (in %) towards your household food expenditure?			Some of the other components for household expenditure (not mentioned in the questionnaire), included eggs (10%), health and hygiene productions (5%)
- Vegetables		20	
- Wheat and rice		40	
- Pulses		15	There was a strong resistance seen in receiving information on this component of the questionnaire from most respondents
- Salt and sugar		15	
- Cooking gas		10	
What is the proportion of your monthly expense (in %) on your children?			In the study, most respondents had children over 20 years old. In other cases, (where children were going to school), the respondent contributed more towards their children's education
- Education (tuition fees and others)		40	
- Medical		30	
- Others		10	
Do you and your spouse pool in your income to spend collectively on identified overheads of household expenditure?			One of the main reason for respondents (with spouses) not being able to pool in included the presence of alcoholic spouses (in Chennai and parts of Haryana), where respondents managed most of the household expenditure on their own
- Yes	26	58	
- No	19	42	

(continued)

**Table 3** (continued)

Questions	Mean (average) figure	Percentage (%)	Key observations
Is there annual revision in your personal income as domestic worker?			
- Yes	26	57	On average, respondents bargained for an annual income revision of 10% of their existing income. Factors like having a union of domestic workers in residential places (in Chandigarh and Mumbai) helps in ensuring such a revision
- No	20	43	
In allocation of household expenditure, who has more say on the spending of your household budget?			
- Respondent	20	48	All respondents interviewed in Chennai and Mumbai were found to be solely responsible for taking all household decisions on expenditure allocation In Chandigarh, the spouses (husbands) of respondents had greater say in household expenditure allocation (irrespective of who contributed more money in the household budget)
- Husband (spouse)	16	38	
- Other family members	3	7	
- Joint decision (respondent + husband)	3	7	

**Table 4** Information on *fertility preference*<sup>a</sup>

Questions	Mean (average) number	Percentage (%)	Key observations
Did/do you have a say or preference in the decision of having children?			
- Yes	27	64	In Chandigarh, there was more of a collective mutual decision-making process (including the respondent and her spouse) in having a child In Sonepat and Delhi, the spouse had a greater say in having a child (as against the respondent) In Chennai, however, the respondents demonstrated a greater say in having a child (fertility preference, as against their spouse)
- No	15	36	
Who tends to have a greater say in the decision of having children?			
- Respondent	7	17	In parts of Sonepat (Haryana) and Delhi, the respondents indicated the prevalence of preferring a male child (due to her spouse and family members) In Chennai and parts of Mumbai, however, the interviewed respondents indicated no gender preference amongst the respondents' household members (spouse or/and family members included) on having a female or male child
- Spouse	20	48	
- Collective mutual decision (respondent + spouse)	15	36	
Is there a household gender preference in having a child (between a female or a male child)?			
- Yes	17	40	In parts of Sonepat (Haryana) and Delhi, the respondents indicated the prevalence of preferring a male child (due to her spouse and family members) In Chennai and parts of Mumbai, however, the interviewed respondents indicated no gender preference amongst the respondents' household members (spouse or/and family members included) on having a female or male child
- No	25	60	

**Table 5** Information on respondents' preference in her children's education<sup>a</sup> and children's marriage<sup>a</sup>

Questions	Mean (average) number	percentage (%)	Key observations
Is your child studying?			
- Yes	26	63	
- No	15	37	
If your child is studying, which institution is your child currently enrolled in?			
- Government school/institution		80	
- Private school/institution		18	
- Other		2	
In the decision on educating your child, which institution do you prefer?			
- Government school/institution	11	27	It was only in Chennai that respondents preferred their children to study in government schools/institutions
- Private school/institution	29	73	
- Other			
If your child is over 20 years old (and is willing to marry), who in your household, tends to have a greater say in her/his decision to marry?			
- Child's own decision	6	19	In most cases in Chennai and Mumbai, the decision on a children's marriage was seen to be dependent more on the collective decision (i.e. of the respondent and the spouse) Only in 6 out of 33 cases saw children being able to decide by themselves on their decision to marry. (which includes 2 cases from Delhi, 1 from Jaipur and 3 from Chandigarh) In case of Sonapat, Delhi constituting for 22% of the overall responses here, the respondents seem to have a limited say (on their own) in their children's decision to marry. The decision here is made by either spouses or the joint family members
- Respondent's decision	3	10	
- Spouse's decision	5	16	
- Collective decision (respondent + spouse)	15	48	
- Joint family decision (collective + extended family)	2	6	

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# Chapter 9

## ‘Well-Being’ of Domestic Workers in India



Sanjeev P. Sahni and Mohita Junnarkar

### Introduction

A domestic worker is a person who works within the employer’s household and completes various tasks such as housekeeping, cooking, laundry, ironing, shopping for food, taking care of children and elderly. Some domestic workers reside within their employer’s household, while others live outside and work for multiple employers. The work is often undervalued and demanding. Domestic work sector is unregulated, and domestic workers are subjected to serious abuses. At times, the accommodation provided is not comfortable and they often sleep in the kitchen or other small rooms. The majority of domestic workers in densely populated developing countries like China, Mexico and India belong to rural areas and are employed by urban families (Dube 2003) in cities.

About 48% of total population of India is female and 25.6% of women form the workforce (Census 2011). Census (2011) reported that the number of female workers aged 15–59 increased by 17% from 2001 to 2011. In cities, it went above 70% from around 14.7 million in 2001 to 25 million in 2011. However, according to a report of The Task Force on Domestic Workers, domestic work has increased 222% since past decade. There is still lack of data on the exact figure of domestic workers in India. Women in Informal Employment: Globalizing and Organizing (WEIGO 2014) reported that an estimated over 50 million are engaged as domestic workers in the country. There has been a steady increase in the percentage of women engaged as domestic workers from 1999 to 2012; however, there is a small percentage of males too who are employed as domestic workers (WEIGO 2014). Very few steps have in fact been undertaken by the Government of India to provide legal protection and social security to domestic workers. Domestic workers have been included in The Unorganized Worker’s Social Security Act (2008) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013).

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Domestic workers often come from marginalized sections of the society, vulnerable communities and backward areas who are largely migrants, uneducated, unskilled and are unable to comprehend the urban labour market (WEIGO 2014).

The sector is heavily plagued with exploitation. The Ministry of Labour and Employment, Government of India, recognized the importance of domestic work and their prevalence in households and the need to regulate the sector to promote decent work to domestic workers. In 2008, domestic workers were recognized as workers in the Unorganized Sector Social Security Act, 2008. Currently, there is no specific single law prevailing for domestic workers in India. The two major hurdles that the sector faces are (i) domestic work is not recognized as actual work and is often taken as an extension of household services which are not even accounted in the GDP and (ii) lack of availability of accurate data. Most of the governments globally find it difficult to estimate accurately the number of domestic workers. Many part-time domestic workers are unlikely to report domestic work as their primary occupation.

The few challenges that plague this sector are (i) no formal contracts that ensure employee–employer relationship, (ii) lack of organization, (iii) poor negotiating power, (iv) lack of legislative protection, (v) inadequate welfare provisions. Since there is a lack of legislative protection and formal employment, often the domestic workers face physical or mental abuse almost every day. Hence, it becomes imperative to study and legislate the ‘well-being’ of domestic workers. This chapter outlines the concept of well-being, the different models of well-being, issues and challenges faced by domestic workers and suggests well-being initiatives that would promote positive mental health amongst domestic workers.

## Concept of Well-Being

Well-being is a complex construct that addresses optimal experience and functioning. This field focuses on the positive aspects of what is right with people rather than on the negative aspects of what is wrong with people. The empirical studies are based on two theoretical traditions of Hedonia (focuses on feelings of happiness) and Eudaimonia (focuses on optimal functioning in individual and social life). Hedonia comprises of life satisfaction and predominance of positive emotions (Diener et al. 1999; Linely et al. 2009) which is equated to subjective well-being, whereas Eudaimonia consists of psychological well-being (includes self-acceptance, personal growth, purpose in life, positive relations with others, autonomy and environmental mastery) based on work of humanistic and life psychologists such as Carl Jung, Abraham Maslow, Gordon Allport, Carl Rogers and Erik Erikson (Lamers et al. 2011).

In the field of well-being research, understanding and exploring psychological, social and emotional well-being of different sections of society have gained empirical impetus with the advent of positive psychology that aims to enhance psychological functioning of individuals (Diener et al. 1999; Kahneman et al. 1999; Linely et al. 2009). Tehrani et al. (2007) envisaged well-being as a construct that represents a broader bio-psycho-social model that entails the physical, mental and social well-



being that is more than the mere absence of physical sickness. Well-being has been defined in several ways such as '*ability to fulfill goals*' (Foresight Mental Capital and Well-being Project 2008), '*as happiness*' (Pollard and Lee 2003), '*as life satisfaction*' (Diener and Suh 1998; Seligman 2002) and '*state of being comfortable, healthy or happy*' (Shah and Marks 2004). In other words, well-being entails feeling satisfied and happy so that individuals would effectively contribute towards the community. Different researchers have proposed different models of well-being, which are discussed in brief in the next section.

## Models of Well-Being

The recent and most important models of well-being are conceptually discussed in this section. The models have been validated in India and globally.

### *Mental Health Continuum Model*

Lately, Keyes (2002) redefined well-being by converging the two traditions together, thus stating that well-being is the presence of emotional, psychological and social well-being. Definition of Keyes aligns with WHO definition of mental health '*a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully and is able to make a contribution to his or her community*' (WHO 2004, p. 21). Thus, the definition indicates that well-being is perceived as effective functioning at individual and community level. Corey and Keyes (2005, 2007) proposes a mental health model with equivalence to mental illness model that focuses on a syndrome of symptoms that emphasizes subjective well-being. Subjective well-being is individuals' perceptions and evaluations of their own lives in terms of their affective states and their psychological and social functioning (Keyes and Waterman). Another integral part of positive functioning is emotional well-being. Emotional well-being is a cluster of symptoms reflecting the presence or absence of positive feelings about life, which is assessed as positive affect and negative affect. Like mental illness (such as depression), mental health is more than mere presence and absence of emotional states. Therefore, Keyes used the term diagnosis to identify mental health categories such as flourishing, moderate mental health and languishing mental health for different components of well-being such as psychological well-being, emotional well-being and social well-being.

## ***PERMA Model***

Seligman (2002) proposes three vital elements of well-being: pleasure, engagement, and meaning. His recent theory decomposes the construct of well-being into five components which are essential for people to experience lasting happiness, namely positive emotions, engagement, positive relationships, meaning/purpose in life and accomplishment (PERMA) (Seligman 2011). Seligman (2011) suggests that these five domains can be defined and measured independently; however, they are highly correlated. This model assesses well-being across multiple domains and does not condense the responses to single flourishing score.

## ***Psychological Capital (PsyCap) Model***

Seligman and Csikszentmihalyi (2000) states that psychology focused on ‘fixing’ mental illness and dysfunctional behaviour, rather than on understanding and facilitating normal functioning as well as growth and development in healthy individuals. There was a lack of empirical literature on what makes people healthy, happy, productive, creative, function normally and capable of living, working and loving. This gap was recognized, and a new area of positive psychology was proposed. Large application of positive psychology has been seen in the fields of management and organizational behaviour. Primarily the literature can now be classified into three main areas, namely (i) positive organizational scholarship that emphasizes the positive characteristics of organization that facilitate its ability to function during crisis; (ii) positive organizational behaviour, which is defined as study and application of positively oriented human resources strengths and psychological capacities that can be measured, developed and effectively managed for performance improvement at workplace and (iii) PsyCap which is defined as ‘*an individual’s positive psychological state of development that is characterized by (i) having confidence (self-efficacy) to accept and put in necessary efforts to succeed in challenging task, (ii) making a positive reference (optimism) about succeeding now and in the future, (iii) persevering toward goals and redirecting as and when required in order to succeed (hope) and (iv) when faced with problems and adversity, to sustain oneself and bounce back (resilience) and stretch one’s limit to attain success*’ (Luthans et al. 2015). The major functions of this model are that it (i) facilitates positive cognitive appraisals of past, present and future events; (ii) predicts satisfaction with work, health, relationships and life in general; (iii) facilitates the processes necessary for attention, interpretation and retention of positive and constructive memories that are conducive to well-being; (iv) has broadening and building effect on positive affective states that can be drawn during adversity; and (v) helps mitigate the prevalent negativity bias and adaptation, sustaining well-being over time.

## ***Quality of Life (QOL)***

The QOL is the general well-being of individuals and societies that outline the negative and positive features of life. The model consists of satisfaction with life and health, social relationships, psychological well-being, physical health and environmental health (WHO 1996; Skevington 2001). The concept of QOL has emerged significantly over a decade. The general QOL is different from the other recent models of QOL such as health-related quality of life (HRQOL) and work-related quality of life (WRQOL). HRQOL is an assessment of the quality of life and its relationship with health, and WRQOL is a multidimensional construct that is closely associated with job satisfaction, job involvement, motivation, productivity, health, safety and well-being, job security, competence development, and balance between work and non-work life. The WRQOL considers that people are trustworthy, responsible and capable of making a valuable contribution to their organization, and they treat other people too with respect (Rethinam and Ismail 2008; Vijaimadhavan and Raju 2013).

## **Well-Being of Domestic Workers**

With the advent of modernization, it was predicted that paid domestic work would cease to exist. However, the prediction has been proved horribly wrong. Rather in few countries, paid domestic work has grown rapidly. In few Asian countries such as India and China, interstate migration has predominantly increased, whereas in other countries such as USA, Canada, Western Europe and Gulf states, migrant domestic workers from other countries have seen a growth (Moors 2003). There is still lack of empirical research on psychological health and well-being of paid domestic work undertaken by academia. Most of the work on paid domestic workers are concentrated on the field of gender studies focusing on gender inequalities, wage disparities, lack of legalization and legal framework for employment, socio-economic conditions, caste discrimination, non-recognition of skills and role of placement agencies.

World Health Organization (WHO) has estimated that mental and behavioural disorders account for 12% of global burden of disease (Division of Epidemiology, St. John's Research Institute, St. John's National Academy of Health Sciences, Bangalore, India). Yet, a lot of attention has been paid to physical health diseases and not to mental and behavioural disorders. In urban areas, employed mothers from low-income groups face a plethora of challenges in their domestic, environmental and working conditions that may affect their mental well-being. Often these women reside in slums and work as domestic workers. Empirical evidence suggested that life stressors associated with poor financial status increase risk of mental health disorders (Parkar et al. 2003; Patel and Kleinman 2003) and women are more vulnerable than men to mental health disorders such as depressive disorders, schizophrenia, affective disorders and self-inflicted injuries (WHO 2005).

A research carried out in urban South India with 26,001 participants demonstrated that 15.1% recorded the prevalence of depression. Depression was observed higher in women who belonged to low-income groups (Poongothai et al. 2009). The probable cause could be their living conditions that are marked with challenging socio-physical environment which can take a toll on their mental health (Gruebner et al. 2012). Kermode et al. (2007) identified that different risk factors such as poverty, poor living, poor working conditions, alcoholic husbands, intimate partner violence and financial difficulties enhanced the chances of depression, suicidal ideation and attempt to suicide amongst women. Silvanus and Subramanian (2012) demonstrated that in urban slums people suffered from serious mental health issues which were related to financial problems, marital conflicts, interpersonal conflicts and housing problems. Similar results were reported on low-income working mothers in Bangalore through a qualitative study (Travasso et al. 2014).

Khillare and Sonawane (2016) studied the impact of work life of women domestic workers on their family life. The results indicated that many women found it difficult to maintain work–family balance. Most of the time, it was difficult and this leads to disputes in the family environment which were often aggravated due to an alcoholic husband. Further, the researchers documented that most of the women worked more than three–five hours daily, their wages ranged from 1,000 to 2,000 rupees and they suffered from various physical ailments and health issues.

Different empirical studies have been conducted amongst urban slum dwellers to identify risk factors for depression and suicide. An ethnographic study set in Mumbai slums found that alcoholism amongst husbands, intimate partner violence, financial stressors and poor living and working conditions increased the risk of depression (Parkar et al. 2003), whereas Patel et al. (2010) mentioned that factors including poor financial status, marital conflicts and alcoholism were associated with increased risk of suicide. Another study set in urban Indian slums affirmed the same and revealed that 63.31% of the study sample had serious mental disorders which were related to financial issues, marital difficulties, interpersonal conflicts and housing problems. Similarly, in rural areas, Kermode et al. (2007) found that attempted suicide amongst women increased with husband's alcohol consumption, intimate partner violence and financial difficulties.

## **Issues and Challenges Faced by Domestic Workers**

The domestic work sector is plagued by several challenges since it is not highly regulated by laws. It is important to understand the issues and challenges as these can hamper the mental health and well-being of an individual. Indian female domestic workers usually come from the underdeveloped regions of states of Jharkhand, West Bengal and Assam primarily, who migrate across states and transnationally to seek work as domestic workers in affluent homes. Many of them are under the legal age of working, and their wages are less than the minimum. The employers range from India's elite to upper middle class and even middle class households, who believe

in the traditional hierarchical division between 'servants' and 'masters'. Mental, physical or at times sexual abuse is not a rarity. Often subtle discrimination in the form of eating leftovers after employers have finished their meals, sitting on the floor, is still commonly practised (WEIGO 2014).

The domestic work sector absorbs the unskilled and less educated or illiterate women who have limited job opportunities. Low or no educational level leads to limited negotiating power and hence low earnings. The Ministry of Labour and Employment, Government of India, in the Final Report of Task Force of Domestic Workers (p. 46) stated the following problems that are faced by domestic workers:

- i. Lack of decent wages.
- ii. Poor working conditions.
- iii. Lack of uniformity and fixed monetary and non-monetary benefits like holidays.
- iv. Violence, abuse and sexual harassment at workplace. Several cases such as not providing sufficient food to eat, not allowing the domestic worker to sit on a chair and not letting them use the toilet in the house are common employer behaviours that domestic workers have to face.
- v. Exploitation by placement agencies.
- vi. Lack of benefits such as social security, health insurance benefits, maternity protection and old-age security.

Through empirical evidence and reviewing literature, Chandrashekhar and Ghosh (2007) and Gothoskar (2005) listed few challenges and issues that domestic workers face.

**Unregulated and Underpaid:** Due to the lack of legal regulation, often the workforce is underpaid. A large number of female participation and location in private space of household and low level of participation of women in formal employment resulted in lack of regulation and underpayment for the services. Though several state governments in India such as Andhra Pradesh, Karnataka, Kerala, Bihar, Jharkhand, Tamil Nadu and Rajasthan have notified the sector under minimum wage, yet fewer attempts and efforts are made to enforce legislation (Chen 2012; Bhattacharya, Sukumar and Mani 2016). In the domain of mental health literature, there is lack of consensus on the linkage of economic indicators and well-being. Hence, it cannot be stated that regulation of payment will enhance the well-being. However, regulation would lead to enhancing their current quality of life, enrolment of children especially girls in primary schools, and a decrease in the dropout rate of secondary school girls.

**Caste and Religion:** In India, caste and religion still continue to dominate and determine the division of labour and tasks assigned. Often employers arbitrarily associate caste of a domestic worker on the basis of worker's skin colour. Through an empirical study, Chen (2012) reported that women from backward castes are largely employed in cleaning tasks while upper-caste women are employed in the kitchen as cooks or for washing dishes. Furthermore, the study indicated that often women migrated from rural to urban to avoid such caste-based stereotypes. The workers opined that the social transformation of the urban locale which comprised of young professional nuclear households employed workers without prejudice. Also often the migrant

workers preferred to keep their caste identities undisclosed to better their chances of finding employment. Research studies (Corrigan 2004; Contrada et al. 2000; Harrell 2000) have documented that stigma and stereotypes diminish self-esteem, self-efficacy, cognitive appraisal, attributions of an individual, and robs people of social opportunities and social support. Furthermore, Harrell (2000) stated that stereotypes, stigma and racism lead to physical ailments such as hypertension, cardiovascular reactivity, risk behaviour (e.g. cigarette smoking); psychological distress such as depression, anxiety, trauma-related symptoms and hostility; and it also impacts social connectedness, job performance, academic achievement, and parental functioning.

**Non-recognition of Skills:** A patriarchal notion that a women worker is inherently unskilled is still prevalent in modern India. A hypocritical attitude prevails such as domestic worker cooking food is considered to be unskilled, but a chef cooking in the hotel is considered skilled; such attitudes have resulted in undervaluing and consequently in underpayment of domestic workers (Bhattacharya, Sukumar and Mani 2016). The non-recognition of skills is likely to affect self-concept, self-esteem, achievement motivation and increase hostility and aggression in a person. However, there is lack of empirical documentation in this area and further work is required.

**Working Conditions:** Through a participatory research, Bhattacharya, Sukumar and Mani (2016) demonstrated that domestic workers often chose their work hours according to the employer's family needs. Thus, newly married and younger domestic workers went out to work while their husbands were at work or children were at school and they worked in more households, whereas older women worked with fewer households. The women claimed to abstain from taking leaves and hardly any weekly off. Often women took leave only on important occasions such as to visit a native place or when they or their children were sick. Women claimed that they regularly received a festival bonus and annual bonus. Due to visiting several households in a day, the women faced physical health problems such as a backache, aching limbs, colds and fevers, skin infections arising due to unsafe corrosive detergents, instances of kidney stones as a consequence of lack of adequate access to drinking water and acute anaemia. The women workers expressed displeasure for excessive supervision by female employers. Workers felt uncomfortable and irritated when there was a continuous demand for perfection in work and employer closely watching the speed, accuracy and quality of their work.

The Centre for Civil Society reports (Tandon 2012) that apart from issues and challenges, the domestic workers aspire for education for themselves; education for their next generation; less commission to agent and more wages to maid; land/property/house of their own; sanitation facilities; engage in skill-building activities like stitching and get decent square meals daily. Dar and Rani (2014) reported vulnerable conditions of domestic workers in Punjab. Through an empirical study, the different reasons for vulnerability documented were casteism, gender-based discrimination, poor financial status, irregular work, very little or no bargaining control, lack of credit facilities, substance abuse/dependency amongst male family members, the death of a spouse, and lack of property.

The challenges that plague the sector have a damaging effect on the mental health of the domestic workers. To the best of the knowledge of authors, there is lack of Indian empirical evidence with respect to the application of well-being models for domestic workers. The research studies have identified the different factors that affect the social and non-cognitive skills of domestic workers. However, there are no intervention programmes yet designed for domestic workers. A few NGOs work closely with issues of domestic workers. These NGOs primarily cater to the full-time domestic workers who reside with the employer or the domestic workers who are registered as part of a placement agency. The issues of part-time domestic workers who work in multiple houses are not addressed, and their mental health is rarely discussed. The succeeding section recommends few well-being initiatives for addressing and enhancing the well-being of domestic workers.

## Well-Being Initiatives

Few studies (Balaji et al. 2012; Patel et al. 2010) have demonstrated that effectiveness of small-scale initiatives is necessary to provide community-based mental health services in India. However, there is still an ongoing need to design customized well-being initiatives for different population groups. Travasson et al. (2014) suggested that well-being initiatives should address the issue of intimate partner violence since it is associated with alcohol and is one of the most frequently reported causes of poor mental health. Globally, a strong relationship between intimate partner violence and depression is widely reported. This is also a cause of suicide ideation and suicidal attempts (Koenig et al. 2006). This is being tackled by several NGOs who have started counselling services and shelters for abused women but awareness remains low coupled with uneven access. Challenges that NGOs face in delivering such services are numerous. There is a need to address community and structural drivers such as women's power, male identity, social and community norms, family elder's roles in family income generation and investigation of partner violence (Jewkes 2002; Krishnan et al. 2012). There is a huge need in India to identify the intimate partner violence and mental health support services (Kermode et al. 2007) to avoid mental stress and as a consequence the tendency towards committing suicide.

*Dil Mil* intervention is currently taking place in Southern India that identifies the participants through primary health clinics and aims to provide intergenerational counselling sessions to daughters-in-law and mothers-in-law. The sessions are based on participatory learning and action principles and involve stories, role play and discussions. Co-counselling which aims to build peer support and empathy through dyadic peer counselling interactions within the groups is practised (Kauffman and New 2004; Krishnan et al. 2012). During the course of *Dil Mil* intervention, it was noted that domestic violence was seen to be a private family matter and external sources of support were largely not encouraged by family members.

Lack of child care facilities burdened women which affected largely their mental health and well-being. Many of them received little to no help from their spouses or

other family members. However, given that the ratio of women working in informal sector in India, there is a need to uplift the child care facilities along with providing support services such as creating a platform to share experiences that could help reduce feelings of social isolation (Kingsnorth et al. 2011; Ainbinder et al. 1998) with strong linkage and referral systems to mental health professionals who can provide access to psychiatric services. It is important for the women to be employed as it is not only economically benefitting but also promotes positive mental health for women especially when their children are of school age.

Government of India policies such as Public Distribution System (PDS), Mahatma Gandhi National Rural Employment Guarantee (MGNREG), Indira Gandhi National Old Age Pension Scheme (IGNOAPS), Indira Awas Yojana (IAY), Rashtriya Swasthya Bima Yojana (RSBY), Universal Health Insurance Scheme or the National Policy for Domestic Workers address the biological aspects of well-being models. The psychological or social aspects of well-being model are largely not addressed. The physical health, food and housing needs are covered by the different schemes. However, the domestic workers face complex psychological problems compounded by health issues which are rarely addressed. Thus, there is a strong need to not only identify the problems but also address the same through intervention and awareness programmes.

## Recommendations

There is a need for government and other institutions such as educational institutions and NGOs to consider mental health crucial to the overall health of the population since it has an influence on national development. Integration of mental health research (preventive model) is required with health research systems (curative model) to enhance interactions and avoid inefficiencies, gaps and replications. The government needs to establish a national and regional mental health organization to identify and monitor research gaps, formulate priorities, advocate for international funds, assess research capacity, establish networks, disseminate information and provide technical and financial support. The government needs to invest in mental health research capacity strengthening, particularly through research training and incentives for mental health professionals. Additionally, mental health training needs to be included in curriculum or as training programmes for police personnel, medical professionals and para-professionals, teachers and *Anganwadi* workers.

Interaction of mental health professionals and social workers is most important. Together they can conduct regular mental health interventions and awareness programmes that would focus on increasing physical activity, reducing stress, effective time management, improving interpersonal relationships with a focus on the family environment. The presence of efficient functional *Anganwadi* too helps women to combat stress. Often *Anganwadi* workers are the first available point of contact outside the community. *Anganwadi* centres in rural and urban slum areas can prepare customized intervention programmes with the help of mental health professionals.



## Conclusion

Even if the domestic work sector is plagued with unregulated low wages and lack of policies, it is essential to understand the well-being and mental health of domestic workers. Through different empirical studies, it has been observed that these largely women domestic workers suffer from depression, anxiety, suicide ideation and suicidal attempts. They face a plethora of interwoven and complex web of problems that range from intimate partner violence, alcoholic male family members, lack of child care facilities, financial burden, and inter-relationship conflicts and many more. Thus, addressing issues related to their mental health and well-being becomes imperative. However, there are very few intervention programmes being conducted to cater to their mental health problems. In future, mental health programmes addressing these issues need to be designed and documented scientifically and need to be pursued diligently in the modern welfare society.

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# Chapter 10

## Rights of Domestic Workers in India: A Critical Analysis of Efforts of the National Human Rights Commission of India



Y. S. R. Murthy

### Introduction

The Draft National Policy on Domestic Workers and the Draft Domestic Workers Welfare and Social Security Act, 2010 defines a 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 a temporary or permanent, part time or full time basis to do the household work, but does not include any member of the family of an employer*”.<sup>1</sup> The domestic workers undertake a variety of tasks such as cleaning, cooking, washing, taking care of the children, elderly and pets, and driving. Their work is extremely critical as many households thrive on this support but the conditions under which domestic workers carry out their functions can by no stretch of imagination be described as ‘decent work’.<sup>2</sup>

For instance, any worker is entitled to reasonable hours of work, weekly rest of at least 24 consecutive hours, full clarity on terms and conditions of employment, as well as freedom of association and the right to collective bargaining. As domestic work takes place in a private household, the consequent difficulties in regulation result in domestic workers being denied many of these rights. Though domestic workers enable skilled and educated women to pursue paid work, the International Labour Organization (ILO) pointed out that “the “empowering” factor has been one

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<sup>1</sup> See Section 2(f), Domestic Workers Act, 2010 and see Public Notice issued by the Ministry of Labour and Employment seeking comments and suggestions regarding formulation of National Policy for Domestic Workers and in particular IV. ‘Facilitate recognition of Domestic worker as “Workers”, with the right to register themselves as workers with the state labour department or any other suitable mechanism’, [https://labour.gov.in/sites/default/files/MX-M362N\\_20171013\\_135443.pdf](https://labour.gov.in/sites/default/files/MX-M362N_20171013_135443.pdf).

<sup>2</sup> Report IV (1) (2010).

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sided, as domestic workers are not covered by labour laws, traditional practices view them as ‘servants’ rather than household employees with labour rights”<sup>3</sup>

Domestic work is invisible, undervalued and is not adequately protected under the law, and the domestic workers routinely face issues, amongst others, relating to working conditions, low wages and abuse. In this informal sector, which is unregulated, workers are denied benefits like insurance, paid leave or pensions. These are essentially issues of social justice, human rights and ensuring decent work.

According to the National Sample Survey Organization, there are 41.3 lakh domestic workers in India during 2011–12, of whom women account for a sizeable number (27.9 lakh).<sup>4</sup> But the actual number of domestic workers could be much higher and the official estimate is an understatement.

In 2014, the Ministry of Women and Child Development, in response to a question in the Upper House of Parliament, informed that instances of alleged violence and torture of maidservants during the period 2010, 2011 and 2012 were 3422, 3517 and 3554, respectively. Citing the data of National Crimes Records Bureau (NCRB), it also furnished state-/union territory-wise details. Andhra Pradesh, Assam, Bihar, Chhattisgarh, Karnataka, Kerala, Maharashtra, Tamil Nadu and West Bengal reported higher number of cases than others.<sup>5</sup> While experts point out feminization of poverty, it is important to recognize that the rights of domestic workers have a gender dimension and relate to the issue of gender equality.<sup>6</sup> The idea of sexual division of labour can be vividly observed in India since the role of women is primarily limited to ‘reproductive and community spheres’ whereas men are encouraged to take up political roles.<sup>7</sup>

Though the National Commission for Women (NCW) had drafted the Domestic Workers Welfare and Social Security Bill in 2010 and recommended it to the government, it has not yet been passed by the Parliament. Referring to the exploitative nature of domestic work by spurious placement agencies, it seeks to address the working conditions of domestic workers, including their registration. The draft bill defines the rights of full-time domestic workers and also lays down that no child shall be employed as a domestic worker, or for any such incidental or ancillary work.<sup>8</sup> According to the Statement of Objects and Reasons of this draft Bill,

... absence of any legal protection has led to severe exploitation women and children which include depriving domestic workers from their entire salary, average more than 16–18 h of work per day, absence of proper food and living/sleeping conditions, forced and total cut off from their family members, bonded labour, sexual exploitation by agent during transit, at

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<sup>3</sup>Decent Work for Domestic Workers. <http://in.one.un.org/page/rights-for-domestic-workers/>. Accessed 30 June 2018.

<sup>4</sup>Indian Express (2016).

<sup>5</sup>See press release of the Ministry of Women and Child Development (2014).

<sup>6</sup>Kaga (2012).

<sup>7</sup>Ibid.

<sup>8</sup>Times of India (2013).

the office of agency and at the work place in houses of employers, The list of exploitation is endless.<sup>9</sup>

It further laments that “*With no rights and rules to fall back on, most of the domestic helps have become contemporary slaves*”.<sup>10</sup>

Rights of domestic workers in India bring into sharp focus India’s obligations under the Constitution and commitments flowing from international conventions. The Universal Declaration of Human Rights (UDHR), 1948 has proclaimed that all human beings are born free and equal in dignity and rights and listed a series of human rights which must be ensured to every person. The International Covenant on Economic, Social and Cultural Rights, 1966 to which India is a State Party, guarantees, amongst other rights, right to work, just conditions of work, social security, adequate standard of living and health. ILO has established an impressive array of conventions and other standards guaranteeing rights at workplace. It has been advocating the cause of decent work which requires productive work for women and men in conditions of freedom, equity, security and human dignity.<sup>11</sup> ILO adopted the Domestic Workers Convention in 2011. It asserts that domestic workers are entitled to the rights at workplace under Articles 3, 4 and 11. In particular, these protections relate to freedom of association, the right to collective bargaining, freedom from forced or compulsory labour, child labour, and discrimination in respect of employment and occupation.<sup>12</sup>

The remuneration is to be established without discrimination based on sex (Art. 11). ILO has also issued a number of non-binding recommendations concerning decent work for domestic workers.<sup>13</sup>

Article 23 of the Constitution of India prohibits traffic in human beings and forced labour. Further, the Directive Principles of State Policy assert that

... the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.<sup>14</sup>

In addition, they proclaim that

... children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.<sup>15</sup>

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<sup>9</sup>Domestic workers Welfare and Social Security Act 2010, [https://in.one.un.org/wp-content/uploads/2016/09/domestic\\_worker\\_welfare\\_and\\_social\\_security\\_act\\_2010.pdf](https://in.one.un.org/wp-content/uploads/2016/09/domestic_worker_welfare_and_social_security_act_2010.pdf). Accessed 14 April 2018.

<sup>10</sup>Ibid.

<sup>11</sup>See International Labour Organization (2007, p. v).

<sup>12</sup>Convention No. 189 Decent work for domestic workers [http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/genericdocument/wcms\\_208561.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/genericdocument/wcms_208561.pdf). Accessed 30 June 2018.

<sup>13</sup>Art 11, R201—Domestic Workers Recommendation, 2011 (No. 201) (non-binding guidelines).

<sup>14</sup>Article 39(e) of the Constitution of India.

<sup>15</sup>Article 39(f) of the Constitution of India.

The government has enacted the Unorganized Workers' Social Security Act, 2008 to provide social security benefits to the workers in the unorganized sector including domestic workers.<sup>16</sup> The said Act establishes the National Social Security Board, through which the central government is empowered to formulate schemes relating to, inter alia, life and disability cover; health and maternity benefits; and old age protection. In this way, the government seeks to provide the unorganized workers, who have been listed in the Schedule I of the above Act, with protection.<sup>17</sup>

In the interests of providing comprehensive social security cover, the central government has also launched a number of programmes which include, amongst others, the *Atal Pension Yojana*, *Pradhan Mantri Jeevan Jyoti Bima Yojana* and *Pradhan Mantri Suraksha Bima Yojana* for all citizens. These schemes in particular target the unorganized workers.<sup>18</sup>

Ten state governments have taken active steps towards improving the working conditions of domestic workers and have also ensured access to social security schemes.<sup>19</sup> Seven states have come up with legal frameworks prescribing minimum wages for domestic workers.<sup>20</sup> Some states like Kerala, Maharashtra and Tamil Nadu have also created Welfare Boards to facilitate the process of availing welfare benefits after registration.<sup>21</sup> Though these steps are indeed welcome, yet in reality, "a large majority of domestic workers remain outside the purview of labour laws even today".<sup>22</sup>

The Minimum Wages Act, 1948 was enacted by the parliament, and many states<sup>23</sup> have notified minimum wages applicable to various activities. In reality, minimum wages are not paid for many activities in the informal sector including the domestic workers. It is a serious human rights challenge. The Supreme Court of India also delivered some important judgements in this regard.

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<sup>16</sup>Draft National Policy for Domestic Workers Under Consideration [http://www.business-standard.com/article/news-cm/draft-national-policy-for-domestic-workers-under-consideration-117032700935\\_1.html](http://www.business-standard.com/article/news-cm/draft-national-policy-for-domestic-workers-under-consideration-117032700935_1.html). Accessed 10 September 2018.

<sup>17</sup>Ibid.

i. Indira Gandhi National Old Age Pension Scheme (Ministry of Rural Development)  
 ii. National Family Benefit Scheme (Ministry of Rural Development)  
 iii. *Janani Suraksha Yojana* (Ministry of Health and Family Welfare)  
 iv. Handloom Weavers' Comprehensive Welfare Scheme (Ministry of Textiles)  
 v. Handicraft Artisans' Comprehensive Welfare Scheme (Ministry of Textiles)  
 vi. Pension to Master Craft Persons (Ministry of Textiles)  
 vii. National Scheme for Welfare of Fishermen and Training and Extension (Department of Animal Husbandry, Dairying & Fisheries)  
 viii. *Aam Admi Bima Yojana* (Department of Financial Services)  
 ix. *Rashtriya Swasthya Bima Yojana* (Ministry of Health and Family Welfare).

<sup>18</sup>Ibid.

<sup>19</sup>The ten states are Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan and Tamil Nadu.

<sup>20</sup>Seven states are Andhra Pradesh, Bihar, Jharkhand, Karnataka, Kerala, Odisha and Rajasthan.

<sup>21</sup>Rights for Domestic Workers, United Nations in India, see <http://in.one.un.org/page/rights-for-domestic-workers/>. Accessed 13 September 2018.

<sup>22</sup>Ibid.

<sup>23</sup>Ibid.

The People's Union for Democratic Rights, a non-governmental organization, filed a writ petition by way of public interest litigation alleging violation of various labour laws and infringement of workers' rights in the construction work of various projects connected with the Asian Games.<sup>24</sup> Referring to compulsion arising from hunger and poverty, want and destitution, the Supreme Court pointed out that depriving a person of effective choice of alternatives as well as 'compelling' that person towards adopting a particular course of action may be regarded as 'forceful' and if labour or service is compelled as a result of such 'force', it would constitute to 'forced labour'.<sup>25</sup> When a person provides labour or service to the state or to any other person and is paid less than the minimum wage for it, the Supreme Court held that it is a breach of Fundamental Right under Article 23 of the Constitution.

In this landmark judgement, the Apex Court observed that:

The word 'force' must therefore be constructed to include not only physical or legal force but also force arising from the compulsion of economic circumstance which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour "or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive."<sup>26</sup>

This judgement was path-breaking in the sense it was the first time when the Apex Court spoke from the point of view of a guardian of constitutional rights of domestic workers to have a dignified right to earn livelihood without coercion. Another reason why this decision is considered significant is that it added an 'economic' dimension to the concept of 'force'. Doing so, the Apex Court ensured that domestic workers are not made to suffer inhuman working conditions due to their economic circumstances.

In the next part of this chapter, the National Human Rights Commission's (NHRC's) strategy and efforts in relation to the rights of domestic workers have been described. Following which, a critical appraisal of NHRC's efforts in this regard has been attempted, while the final parts of this chapter seeks to map out a possible way forward.

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<sup>24</sup>People's Union for Democratic Rights v. Union of India [Asiad Workers case], Writ petition 8143 of 1981.

<sup>25</sup>Ibid. The Supreme Court also noted, "Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage".

<sup>26</sup>Ibid.



## NHRC's Strategy and Efforts in Relation to Rights of Domestic Workers

Domestic work is a human rights issue as it encompasses many important rights including the right to livelihood, social security, just conditions of work and equality. Its importance has not been sufficiently acknowledged in practice and there is a lack of awareness about these rights among domestic workers and in the general public. There are countless instances of ill-treatment and exploitation of domestic workers even in the developed countries where rule of law prevails. Apart from the labour laws, domestic worker's rights to freedom of movement, freedom of association, freedom of expression and freedom of security of person are also violated.<sup>27</sup>

While the ILO has been stressing the importance of 'decent work', there is a slow but steady movement for the protection of the rights of domestic workers in many countries.

The NHRC of India was established in October 1993 under the Protection of Human Rights Act 1993 (PHRA) for 'better' protection of human rights.<sup>28</sup> Section 12 of the PHRA entrusts the Commission with a range of functions which includes, amongst others, redressing individual complaints of human rights violations, review of laws, constitutional safeguards, international conventions on human rights and make recommendations thereon; undertake or promote research; spread human rights literacy and awareness and encourage the efforts of non-governmental organizations. In its existence of a little over 23 years, the Commission has taken many initiatives for the protection and promotion of human rights. The Commission's mandate covers, amongst other groups, the rights of domestic workers. Its strategy, over the last two decades, has primarily focused on addressing the issues of bonded labour, child labour, exploitation of migrant domestic workers, etc. This chapter seeks to assess the initiatives taken by NHRC with regard to the issue of rights of domestic workers.

NHRC has not taken up the issue of rights of domestic workers in a big way, but took up the issue of abolition of child labour, bonded labour and trafficking of women and children. Ever since its inception, the Commission has been taking up individual complaints of human rights violation faced by domestic workers, often invoking its *suo motu* jurisdiction. Thus, when Nirmala, a girl belonging to the Scheduled Caste (SC), was branded with a hot hairdryer and beaten with iron rods by her employer in Sarita Vihar, Delhi, the Commission initiated proceedings.<sup>29</sup> It is very important to recognize the fact that the NHRC, within a few months of its establishment since October 1993, decided to take *suo motu* cognizance of this human rights violation meted out to a minor girl child working as a domestic maid. It signifies that this is indeed a serious human rights issue.

In another instance during 1995–96, in the wake of torture and sexual assault of a minor tribal girl 'Baby' from Bihar, who was employed as a domestic worker in Bombay, when an effort was made by the police to cover up the matter, the Commis-

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<sup>27</sup>du Toit (2011).

<sup>28</sup>See Preamble to the Protection of Human Rights Act, 1993.

<sup>29</sup>See NHRC 1993–94.

sion sent its own superintendent of police for investigation.<sup>30</sup> The Commission noted that the enquiry report termed the whole episode as ‘shocking’, and one resulting from ‘depraved human conduct’. Recognizing the seriousness of the complaint, the Commission directed the registration of a case of torture and rape at Raigarh, Maharashtra, where that incident occurred. The Commission also ordered that the trial be transferred outside the state, thus, resulting in a petition before the Supreme Court of India. The Supreme Court subsequently entertained the petition and stayed further proceedings of the trial pending disposal of the transfer petition. In the interim, considering the trauma of the minor *Adivasi* girl, the Commission also provided certain financial assistance through an NGO in Ranchi.<sup>31</sup>

In another instance, the Commission took *suo motu* cognizance of a media report highlighting that children from two districts of Tamil Nadu were being trafficked to Kerala and auctioned at Trichur for the purpose of domestic work. The report dated 14 June 2015 highlighted that there were a number of brokers engaged in trafficking of children based on the *modus operandi* of initially approaching poor parents in the villages of these two districts of Tamil Nadu, before persuading them to send their children on payment of a certain amount. Reportedly, some of the children were also subjected to sexual harassment. Notices were issued by the Commission in this matter to the Chief Secretaries and the Director Generals of Police, governments of Tamil Nadu and Kerala to enquire into the matter and submit reports within eight weeks.<sup>32</sup>

Based on media reports of human trafficking by placement agencies in Delhi, the Commission initiated action.<sup>33</sup> A news item pointed out that an increasing demand for domestic workers is fuelling a business that thrives on human trafficking by unregulated placement agencies which have mushroomed. They had in fact emerged as the hubs and transit point for human trafficking and were involved in the exploitation of women and children in general, particularly those hailing from rural and tribal areas. The Commission issued a notice to the Commissioner of Police, Delhi, calling for a report on the number of placement agencies. It is interesting to note that the NHRC had sought details of both registered and unregistered placement agencies functioning in Delhi as well as steps taken by the law enforcement agencies to keep a check on them.

In addition to redressing individual complaints, the Commission also took up systemic reform of law and policy. Moved by media reports on employment of children below the age of 14 years as domestic workers, often in the homes of government officials, the Commission took up this matter. Following consultations in January 1997, the Commission recommended the inclusion of a rule<sup>34</sup> in the

<sup>30</sup>See NHRC 1995–96.

<sup>31</sup>See National Human Rights Commission.

<sup>32</sup>See NHRC (2015).

<sup>33</sup>Case No. 1005/30/0/2015-WC, NHRC asks Delhi Police Commissioner to submit report on placement agencies on allegations of their involvement in human trafficking, NHRC Press release dated 26.2.2015, see <http://nhrc.nic.in/dispatchive.asp?fno=13519>. Accessed 6 June 2017.

<sup>34</sup>The amendment suggested to Government of India was as follows:

conduct rules of government servants, both central and state, which while prohibiting such employment would also make it a misconduct inviting a major penalty. The Commission advocated for this policy reform with the union government as well as all states/union territories. After much persuasion and protracted correspondence, the Ministry of Personnel, Public Grievances & Pension, Government of India, made necessary changes in the Conduct Rules for Central Services on 4 October 1999 and the Conduct Rules for All India Services on 1 February 2000. According to the amended rule, “no Government Servant/member of the Service shall employ to work any child below the age of 14 years”. Most states, barring a few, have also carried out similar amendments. Though the proportion of government servants employing domestic workers is a minuscule part of the larger malaise, yet it served as symbolic, token or incremental step to draw attention to this serious human rights violation. To that extent, it held a great significance.

The approaches taken by the NHRC can broadly be classified as follows:

(a) **Elimination of bonded labour**

Bonded labour has been interpreted by Supreme Court of India as the payment of wages below the legal minimum wages. Although Article 23 of the Constitution of India outlaws trafficking of human beings and forced labour, the legislation defining and banning bonded labour was approved by the Parliament in the year 1976 when the Bonded Labour System (Abolition) Act, 1976 came into existence. This Act stipulates that it is the responsibility of the state governments to monitor the labour violations and enforcements.<sup>35</sup>

In 1997, the Supreme Court of India had asked the NHRC to monitor the implementation of the Bonded Labour System (Abolition) Act, 1976. The methodology adopted by the NHRC holds lessons for other NHRIs in the South Asian region and elsewhere. It adopted a multi-pronged approach by establishing a high-level Central Action Group headed by the Chairperson of NHRC whose members include the Secretary, Ministry of Labour and other important stakeholders. It was complemented by an Expert Group that was established in September 2000 to prepare a comprehensive report on the situation of bonded labour in India and make appropriate recommendations with regard to the implementation of existing schemes.

The NHRC took, amongst others, the following steps:

- Established an Expert Group.
- Prepared a proforma for periodical reporting by the state governments.
- Appointed Special Rapporteurs in different states and regions of the country to deal with this issue.
- Short-listed reputed and dedicated NGOs for the states/sensitive districts.
- Identified sensitive districts in the country where the problem of bonded labour is acute.

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Central Civil Services (Conduct) Rules, 1964 shall be amended by adding the following as Rule 22-A: ‘22-A: (i) No Government Servant shall employ to work any child below the age of 14 years; (ii) breach of sub-rule (i) shall be misconduct attracting a major penalty’.

<sup>35</sup>Finn.

- Emphasized the Constitution of vigilance committees at district level.
- Organized one-day workshops for sensitizing all officials concerned in the districts identified.<sup>36</sup>
- Spread awareness about the process of identification, release and rehabilitation of bonded labourers.<sup>37</sup>

(b) **Elimination of child labour**

Child domestic labour applies to children (below the relevant legal age) who perform domestic work in the home of a third party or employer and not their family.<sup>38</sup> ILO Worst Forms of Child Labour Convention (No. 182), 1999 defines the worst form of child labour which means that child domestic labour becomes exploitative when it includes trafficking, slavery, or practices similar to slavery, or work which is hazardous in nature and likely to harm the health, safety or morals of the child. Despite legislation, child labour is still practised in rural as well as urban India.<sup>39</sup>

Ever since its establishment in 1993, the NHRC has been deeply concerned about the employment of child labour in the country and its elimination. The Commission took up individual complaints in this regard, besides initiating law and policy reform. It took up bangle/glass industry in Firozabad, silk industry in Karnataka, lock industry in UP, stone quarries, brick kiln, diamond-cutting, ship-breaking, construction work and carpet-weaving sector in UP for scrutiny, in response to reports of engagement of children. The Commission has been monitoring child labour situation in the country through its special rapporteurs and visits by Members. It took up sensitization programmes and workshops, research projects, interaction with the industry associations and other concerned agencies, coordination with state governments and NGOs to ensure that adequate steps are taken to eradicate child labour.<sup>40</sup> In addition, it advocated for the right to free and compulsory education to all children.

(c) **Trafficking in women and children**

Trafficking in women and children is one of the worst violations of human rights. Every year, a large number of women and children are trafficked from the poorest and tribal parts of India and placed as domestic workers in the middle-class or rich homes.

The NHRC identified trafficking in women and children as a serious issue within few years of its establishment in 1993 and played the role of a catalyst. In 2001, it appointed Mrs. (Justice) Sujata Manohar, then Member of the NHRC as the Focal

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<sup>36</sup>The Commission has organized more than 34 workshops so far on elimination of bonded labour. See NHRC Press Release, dated 27 January 2016, <http://nhrc.nic.in/press-release/nhrccs-day-long-workshop-elimination-bonded-labour-begins-jaipur-2712016>. Accessed 28 February 2016.

<sup>37</sup>Y.S.R. Murthy's contribution to EU Project on International Human Rights Protection: National Human Rights Institutions—A case study. (NHRC 1999: 9.3–9.6).

<sup>38</sup>Rao.

<sup>39</sup>Ibid.

<sup>40</sup>NHRC (2010–2011).

Point on Trafficking & Women's Human Rights. It engaged all stakeholders including the policy makers, NGOs, National Commission for Women and others. It also took up an Action Research Study which was a collaborative venture of NHRC and United Nations Development Fund for Women (UNIFEM) and was carried out by the Institute of Social Sciences, New Delhi. The Action Research was aimed at analysing the problem of trafficking as well as the responses to it in India, particularly with a reference to children and women. As a part of the study, brothel owners and traffickers were interviewed. Eventually, it published "[a] Report on Trafficking in Women and Children in India 2002–2003" (NHRC/UNIFEM/ISS 2004).<sup>41</sup> This report as well as recommendations made therein were widely disseminated. This action research study led to many positive spin-offs. They include, amongst others, the following:

- Instituted a system for monitoring trafficking in women and children in all states/union territories with one nodal officer on the police side and one on civil side.
- Held regional workshops.
- Drafted manuals for judicial officers on trafficking.
- Integrated Action Plan to combat trafficking.

#### (d) **Research**

Under Section 12(g) of the Protection of Human Rights Act, 1993, the NHRC has the mandate to undertake or promote research on human rights issues. Similar to the Action Research, NHRC undertook the project titled, 'National Research on Human Trafficking in India' in collaboration with Tata Institute of Social Sciences (TISS), Mumbai. The project's main objectives were to understand and evaluate the nature and extent of human trafficking, assessing the economics/finances of human trafficking, to understand the changing dimensions of human trafficking, and to identify social, economic, political, cultural causes at the household, community and regional level of exploitation.<sup>42</sup>

The Commission had completed the following projects, which have relevance to the rights of domestic workers:

- Bonded child labour in Karnataka silk industries
- A study of child labour in beedi industry in Bharatpur-II block, Murshidabad district West Bengal
- Evaluation of non-formal education for child labourers in the carpet industry based in Mirzapur—Bhadhoi and glass-bangle sector based in Firozabad
- Action research on trafficking in women and children.

#### (e) **Spreading of awareness and literacy**

The NHRC has published booklets on 'child labour', 'bonded labour', 'sexual harassment at workplace' under 'know your rights' series. They describe the relevant legal

<sup>41</sup>Read the report at <http://nhrc.nic.in/sites/default/files/ReportonTrafficking.pdf>. Accessed 30 June 2017.

<sup>42</sup>See page 163 of Annual Report 2015–2016, NHRC [http://nhrc.nic.in/sites/default/files/NHRC\\_AR\\_EN\\_2015-2016\\_0.pdf](http://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2015-2016_0.pdf). Accessed 30 June 2017.

provisions, international human rights standards, Supreme Court's directions and the NHRC's own efforts.

## Critical Appraisal of NHRC's Work in Relation to Domestic Workers

This part seeks to outline some of the challenges with regard to the protection of the rights of domestic workers and also undertake a critical appraisal of how the NHRC acquitted itself in protecting their rights in the last 23 years or so.

Domestic workers are amongst the most vulnerable section of all workers. In particular, women migrant workers face sexual violations. In the earlier sections, we have seen many gaps in the protection of rights of domestic workers in India. There had been many efforts by civil society organizations and trade unions under the banner of National Platform for Domestic Workers for a comprehensive legislation in this regard. The NHRC of India has not yet chosen to take a lead in this direction and failed to advocate for a comprehensive legislation guaranteeing social security, regulation of work, working conditions, etc. for domestic workers. While handling individual complaints from a few states including Delhi are positive steps, what is needed is a comprehensive legislation.

Noting the fact that a few state governments have taken different initiatives such as including domestic workers under minimum wage notification, the National Commission for Women has pointed out that, "in the absence of a central legislation capable of reaching all domestic workers none of these state level measures can really benefit the domestic workers".<sup>43</sup> Holding it as a panacea, the NCW further held that only a comprehensive central legislation specifically designed to meet the working conditions of domestic workers, who are an important segment of service sector of Indian economy, can ensure an end to their exploitation.<sup>44</sup>

As mentioned in the preceding part, NHRC took *suo motu* cognizance of a few individual complaints based on media reports and initiated action. While this must be welcomed by all means, it is important to recognize that complaints-based approach is certainly not the best way to handle the situation; what is required is a policy-based approach and it is imperative to strive for a comprehensive legislation.

A number of legislations enacted by the Parliament and several state legislatures refer to domestic workers. These include, amongst others, the Unorganized Social Security Act, 2008, Sexual Harassment against Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Minimum Wages Schedules notified in various states. The United Nations, however, observes that "there remains an absence of

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<sup>43</sup>Domestic Workers Welfare and Social Security Act 2010. [https://in.one.un.org/wp-content/uploads/2016/09/domestic\\_worker\\_welfare\\_and\\_social\\_security\\_act\\_2010.pdf](https://in.one.un.org/wp-content/uploads/2016/09/domestic_worker_welfare_and_social_security_act_2010.pdf). Accessed 14 May 2017.

<sup>44</sup>Ibid.

comprehensive, uniformly applicable, national legislation that guarantees fair terms of employment and decent working conditions”.<sup>45</sup>

Section 12(f) of PHRA requires the NHRC to study international human rights treaties and make recommendations thereon. In pursuance, the Commission advocated the signing and ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. As a result of the Commission’s efforts, the Government of India has signed it but its ratification is still awaited. The NHRC also recommended that India ratifies the two Optional Protocols to the Convention on the Rights of the Child, 1989, namely the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC). In pursuance, the Government of India signed and ratified these two Optional Protocols to the CRC, as recommended by NHRC. Following the recommendation by the Commission, the government also signed and ratified the Convention on the Rights of Persons with Disabilities. The NHRC also took up the issue of the ratification of the Convention on the Status of Refugees, 1951, and 1967 Protocol thereto as well as the Additional Protocols of 1977 to the Geneva Conventions, 1949, relating to International Humanitarian Law.

In the preceding section, we have seen the myriad human rights violations faced by domestic workers. However, it is a matter of extreme regret that NHRC, India, has still not recognized it as a major challenge and not accorded priority to this issue, which it deserves. It has not advocated the early ratification by India of the ILO’s Domestic Workers Convention, 2011. There is no indication whatsoever about the Commission’s willingness to take up this matter. The NHRC has not made any public pronouncements in this regard nor made any recommendations. It has failed to sensitize lawmakers, civil servants and other sections of the general public on this critical issue. It is yet to take a public stand in this regard.

Under Section 12(e), the NHRC has a statutory responsibility to “review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures”. In terms of the rights of domestic workers, where violations are frequent and numerous, the Commission could have acted under the mandate of Section 12(e). However, it has not taken up this issue as comprehensively as the issue deserves.

## Way Forward

There is a need for an early finalization and adoption of the Draft National Policy on Domestic Workers, 2012. This step will signal the government’s commitment to uphold the rights of domestic workers and will also sensitize all stakeholders. In addition, there is a need to enact a comprehensive legislation to protect the rights

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<sup>45</sup>Rights For Domestic Workers. <http://in.one.un.org/page/rights-for-domestic-workers/>. Accessed 10 June 2017.

of domestic workers without any further delay in order to provide legal entitlements and ensure that the rights of domestic workers are secured.

The Parliament must pass the model Domestic Workers Regulation of Work and Social Security Bill, prepared by the National Platform for Domestic Workers and create an autonomous statutory body, mandatory registration of domestic workers, employers and other placement agencies, and enforce penalties for non-compliance.<sup>46</sup> It is necessary to shift the mindset of people from law and order paradigm to the rights of the workers.<sup>47</sup>

The National Human Rights Commission must take initiatives with regard to law and policy reform, legislative and media advocacy to prevent further violations of the rights of domestic workers. While it has taken a few initiatives, it must deepen its efforts in this regard.

While NHRC is a recommendatory body, the responsibility squarely falls on the shoulders of the Executive to ensure that rights of domestic workers are protected. It is important for the government to initiate necessary reforms to provide protection to the domestic workers at home as well as to migrant workers.

## Conclusion

The domestic workers in India have been facing serious human rights violations. Some of these violations find their way into media reports, while many go unreported. If the United Nations' call for 'all human rights for all' is not to end up as rhetoric, there is a lot that needs to be done to protect and promote human rights. The NHRC of India took several initiatives which address the concerns of domestic workers to some extent. However, as documented in the preceding parts, we have seen how the NHRC has barely scratched the surface. It must take a public stand on this issue, advocate for the rights of domestic workers and put this issue squarely in the public consciousness. It must ensure that domestic workers are covered by labour laws, and ensure that they are no longer viewed as 'servants' but rather as household employees with labour rights. It must also advocate for a comprehensive legislation to protect the rights of domestic workers. The PHRA confers a clear mandate to NHRC, and if it does not wish to end up as a 'pretender' rather than a 'protector', it must recognize the rights of domestic workers as a serious issue and make a determined effort to protect and promote their rights.

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<sup>46</sup>See Indian Express (2016).

<sup>47</sup>Sampath (2017).



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