

IS THE ‘\$1.5 MILLION MAID’ A SOLITARY CASE?

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Human rights laws have just begun to attend to the discriminations and inequalities that constitute the realm of domestic work. The habitual exclusions of employment law and social security granted to migrants has been long exploited against the precarious migration status and has, until the recent circumstances, attracted only limited attention. With the significant contribution of domestic workers to the global economy, including increased paid job opportunities and substantial income transfers within and between countries, the concerns about their abuse also rises rapidly. This article addresses the issue of the abuse of privilege over the human rights of domestic helps in the private households of diplomats. The authors argue the need for India to ratify essential treaties with respect to the protection of migrants or domestic workers outside its territory leaving them unprotected against the evils of diplomatic immunity. Lastly, broad policy recommendations have been prepared inter alia spreading awareness about the rights granted to domestic workers, irrespective of the protective diplomatic status of their employers.

Keywords: *diplomatic immunity, domestic workers, exploitation, human rights, human trafficking, labour migrants.*

BACKGROUND

The fundamental question raised in this paper is whether diplomatic immunities should prevail even where a violation of human rights has been established. Violation of rights experienced by migrant domestic workers in diplomats' households may seem to be a side issue only of the broader discourse on human trafficking and exploitation of labour migrants.¹ Upon further inspection its relevance as a human rights issue becomes clear in two respects: *First*, the violation of labour rights and exploitation in diplomatic households is a rooted shortcoming in the protection of diplomats' domestic workers that cannot be overlooked both in sending states and in host states.² *Second*, because of their employers' diplomatic immunity, the violation of rights and restrictions of freedom is aggravated which severely restricts, if not entirely bars, victims' access to justice.³

A broad definition of a foreign domestic worker as understood in the international community⁴ is a migrant workers who is a person to be engaged, is engaged, or has been

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¹ Angelika Kartusch, *Domestic Workers in Diplomats' Households Rights Violations and Access to Justice in the Context of Diplomatic Immunity*, 7, 9 (German Institute Of Human Rights, June 2011).

² Ryszard Cholewinski, *The Human and Labor Rights of Migrants: Visions of Equality* 177, 194, 196 (22 GEO. IMMIGR. L.J. (2008)

³ Angelika Kartusch, *supra* note 1 at 5.

⁴ A. MackIm, "Foreign domestic worker: Surrogate housewife or mail order servant?" 681 (McGill Law Journal, Vol. 37, No. 3, 1992).

engaged in a remunerated activity in a State of which he or she is not a national.⁵ The designation of ‘migrant’⁶ also applies to forced migrants who do not qualify for special status under international law⁷, but nevertheless are forcibly displaced to, or are compelled to find refuge in the territory of another country.⁸ The term ‘diplomat’ is a person with diplomatic rank working in a state’s diplomatic mission abroad (including bilateral embassies and permanent representations with international organizations). The denial of equal protection to migrants is widely acknowledged as a human rights issue and has been a subject of increasing concern.⁹ Their dissentient voices are muted¹⁰ and diplomatic immunity has interminably prevented any prosecution of foreign diplomats who bind domestic workers in their homes.¹¹ The vulnerabilities arise due to the legal status of many migrant domestic workers,¹² the influence of the relationship of power and dependency between domestic workers and their employers.¹³ In case after case, diplomats misused their exemption to thwart trafficking victims’ efforts to use civil suits to obtain justice for exploitation.¹⁴ Cases of *Shanti Gurung*¹⁵ and *Devyani Khobragade*¹⁶ are not new to the international community in tackling this issue.¹⁷ Both cases reported of allegations which included ill treatment at the hands of the employees, non-returning the passports which were also illegally acquired and deficit in

⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the Migrant Workers Convention, adopted 18 December 1990 at the 45th session of the General Assembly of the United Nations, article 2(1). (India has not signed or ratified the Convention).

⁶ P.A. Taran, Human Rights of Migrants: Challenges of the New Decade, in THE HUMAN RIGHTS OF MIGRANTS 29 (International Organization of Migration 2001)

⁷ P. Weinert, *Foreign female domestic workers: Help wanted!*, World Employment Programme Working Paper No. 50 (Geneva, ILO, 1991)

⁸ James C. Hathaway, *The Rights Of Refugees Under International Law* 238–39 (Cambridge Univ. Press 2005); Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, 476-479 (2nd Edn., N.P. Engel Publications, 2005).

⁹ Universal Declaration of Human Rights art. 30, G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR], Art. 7; International Covenant on Civil and Political Rights, Mar. 23, 1976, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171 [hereinafter ICCPR], Art. 26.

¹⁰ D. Kruse, *Employee Ownership, Employee Attitudes, And Firm Performance* (Cambridge, Massachusetts, National Bureau of Economic Research, Working Paper No. 5277, Sep. 2002).

¹¹ Amy Tai, *Unlocking the Doors to Justice: Protecting the Rights and Remedies of Domestic Workers in the Face of Diplomatic Immunity*, 175, 178-79 (16 American Journal of Gender, Social Policy & the Law, 2007).

¹² Murphy Clíodhna, *Researching Barriers To Access To Justice For Migrant Domestic Workers In Diplomatic Households* 407 (ILJ, Oxford University Press, 2013); Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, General Comment No. 1 on Migrant Domestic Workers (23 Feb. 2011), U.N. Doc. CMW/C/GC/1 (2011) [CMW General Comm. No. 1].

¹³ Clíodhna Murphy, *The Enduring Vulnerability of Migrant Domestic Workers in Europe*, 599-624 (International and Comparative Law Quarterly, July 2013).

¹⁴ *Tabion vs. Mufti*, 73 F.3d 535 (4th Cir. 1996); *Logan vs. Dupuis*, 990 F. Supp 26 (D.D.C. 1997).

¹⁵ *Shanti Gurung vs. Jogesh Malhotra And Neena Malhotra*, 279 F.R.D. 215 (S.D.N.Y. 2011); Erwin de Leon, *Diplomat's Servant Exposes Modern Day Slavery in the U.S.*, The Huffington Post, Mar.6, 2012, available at [http://www.huffingtonpost.com/erwin-de-leon/shanti-gurung-indian-maid-abuse_b_1321147.html?ir=India&adsSiteOverride=in](http://www.huffingtonpost.com/erwin-de-leon/shanti-gurung-indian-maid-abuse_b_1321147.html?ir=India&adsSiteOverride=in;); Narayan Lakshman, *Indian diplomat asked to pay \$1.5 million to ex-maid*, The Hindu, Feb. 24, 2012, available at <http://www.thehindu.com/news/international/indian-diplomat-asked-to-pay-15-million-to-exmaid/article2925053.ece>.

¹⁶ Veenu Sandhu, *Devyani Khobragade: The woman who has chosen to speak out*, Business Standard, Jan. 3, 2015, available at http://www.business-standard.com/article/specials/devyani-khobragade-the-woman-who-has-chosen-to-speak-out-115010200813_1.html.

¹⁷ International Labour Office, *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection* (Geneva: International Labour Office, 2013).

payment.¹⁸ With the growing demand for low-skilled, low-paying labour the need for foreign live-in servants to clean, cook, and care for children have only skyrocketed.¹⁹ This conundrum gets worse when the courts reject applications against deficit payments²⁰ and non-issuance of the work contract inter alia employment claims,²¹ on the grounds of unsubstantiated claim by an injured domestic worker²² or diplomatic immunity.²³

VIOLATION OF HUMAN RIGHTS BY DIPLOMATS

Victims during the course of their employment have experienced numerous violations of their human rights²⁴, this poses a potential collision course in international law, which can only be uncomplicated by studying the indispensable human rights as opposed to the immunities granted to government servants.²⁵ It is quintessential to examine whether human rights ought to be safeguarded even if it means the curtailment of diplomatic and consular immunities.

The right to just and favourable working conditions²⁶ are violated when the workers receive less than minimum wages and are forced to work over long periods without adequate rest or periodic holidays with pay.²⁷ The migrants ought to be provided access to medical care²⁸, social security²⁹, and an adequate standard of living, including food, clothing, and housing, in reality they are kept hungry and only given leftovers to eat³⁰.

‘Decent work deficit’³¹ suffered by domestic workers has been addressed internationally, with the adoption of the ILO Convention Concerning Decent Work for Domestic Workers in

¹⁸ Prabhu Dayal, *Fear and loathing in New York: Former diplomat Prabhu Dayal reveals how Indian envoys to the US can fall victim to maids pursuing their American dreams*, Daily Mail, Dec. 22, 2013, at 2.

¹⁹ Mohamed Mattar, *Trafficking in Persons, Especially Women and Children, in the Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 721–60 (Fordham International Law Journal 26, No. 3 (2003)).

²⁰ See Saroj Pathirana, *Kuwait’s Abused Domestic Workers Have ‘Nowhere to Turn’*, BBC News, 13 October 2010, <http://www.bbc.co.uk/news/world-south-asia-11444167>.

²¹ *Wokuri vs. Kassam*, [2012] EWHC 105 (Ch)

²² *Maid Accuses Saudi Princess of Abuse*, ABC NEWS, Jan. 18, 2002, available at <http://abcnews.go.com/2020/story?id=123950&page=1>.

²³ R. O’Keefe, *Decisions of British Courts during 2012 Involving Questions of Public or Private International Law*, 202-270 (British Yearbook of International Law (2012) 83 (1))

²⁴ Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* 8 (ILO Geneva, 2003)

²⁵ ICCPR, *supra* note 10 at Arts. 6, 7; The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 UNTS 85 (signed by India on Oct 14, 1997 but not ratified yet.) [Hereinafter “CAT”] at Art. 7.

²⁶ International Covenant on Economic, Social and Cultural Rights art. 5, Dec. 16, 1966, 1966 U.S.T. 521, 993 U.N.T.S. 3. 6 I.L.M. 360 [hereinafter ICESCR]. Art. 7.

²⁷ Angelika Kartusch, *supra* note 1 at 5.

²⁸ ICESCR, *supra* note 26 at Art. 12.

²⁹ ICESCR, *supra* note 26 at Art. 11.

³⁰ ICESCR, *General Comment No. 3: The Nature of States Parties’ Obligations*, para. 9, U.N. Doc. E/1991/23, annex III at 86 (Dec. 14, 1990), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 9 (2003); UDHR, *supra* note 10, Art. 25

³¹ A.S. Blinder, *Paying for productivity: A look at the evidence* (Washington, DC, Brookings Institution, 1990); ILO: Decent Work Report, 4 (Director-General, International Labour Conference, 87th Session, Geneva, 1999).

2011.³² Migrant domestic workers employed as private staff continue to be the most exploited class of workers when it comes to Labour classes, this is also due to the diplomatic immunity of their employer under the 1961 Vienna Convention on Diplomatic Relations³³ and Customary International Law.³⁴

The prohibition of slavery³⁵, servitude and forced labour³⁶ are also infringed by these employers³⁷ by isolating and abusing the workers, keeping them from the shields of legal protection.³⁸ Even if proper documentation of visas³⁹ and immigration⁴⁰ is carried out, this illegal trafficking is executed once the worker crosses international borders and is disabled to leave.⁴¹ These workers are then subjected to physical, sexual⁴² and psychological abuse⁴³, their passports are confiscated⁴⁴ among other immigration documents. No legal existence⁴⁵ and dependency on the employer amplified the degree of informality in respect of the immigration status of diplomatic workers preserves the 'invisibility' of this category of migrant domestic worker.⁴⁶

The right to privacy is affected when the domestic worker is not provided with a room for herself or himself, under Article 17 of the ICCPR⁴⁷. An unjustifiable interference with her rights to privacy and to family life would constitute a violation of privacy rights.⁴⁸ Repeated

³² ILO Convention Concerning Decent Work for Domestic Workers (C189), adopted at the 100th session of the International Labour Conference, Geneva, 2011, entered into force Sept. 5, 2013. (India has not ratified this convention); Blackett, *Introduction: Regulating Decent Work for Domestic Workers*, 23, (2011) Canadian Journal of Women and the Law; Human Rights Watch, "Decent Work for Domestic Workers: The Case for Global Labor Standards: Human Rights Abuses, Best Practices, and Recommendations for an ILO Convention," 2007, 13, http://www.hrw.org/sites/default/files/related_material/HRW_ILO_brochure_lores.pdf.

³³ Vienna Convention on Diplomatic Relations (adopted 14 April 1961, entered into force 24 April 1964), 500 UNTS 95 (hereinafter, the 'VCDR')

³⁴ Castren, E.J.S., 'Some Considerations upon the Conceptions, Development and Importance of Diplomatic Protection', 576 (11 Cambridge 1984); Report of the Special Rapporteur on *Contemporary forms of slavery, including its causes and consequences*, 57 of UN Doc A/HRC/15/20 (18 January 2010).

³⁵ Anti-Slavery International, Discussion Paper: Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking, 2003, at 16, 25-36.

³⁶ ICCPR, *supra* note 9 at Art. 8.

³⁷ UDHR, *supra* note 9, art. 23.

³⁸ A. Rassam, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, 804, 824 (Pennsylvania State International Law Review, Issue 1, 2005)

³⁹ Parvathi Menon, 'Tied' visa rule worsens condition of migrant domestic workers in UK, *The Hindu*, Apr. 1, 2014, available at <http://www.thehindu.com/news/international/world/tied-visa-rule-worsens-condition-of-migrant-domestic-workers-in-uk/article5858634.ece>.

⁴⁰ Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Vol. 13.2(G), 2001.

⁴¹ Kevin Shawn, 'Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purposes of Domestic Servitude', 499-500 (Journal on Poverty and Policy, 14th Edn., Issue 3, 2007)

⁴² Angelika Kartusch, *supra* note 1 at 5.

⁴³ Satterthwaite Margaret, *Modern Day Slavery: The Trafficking of Women to the United States*, 11, 13 (Woman's Law Journal, 4th Edn., Issue 1, 2000)

⁴⁴ Angelika Kartusch, *supra* note 1 at 7, 24, 30-34.

⁴⁵ Migrant Rights Centre of Ireland, *Protections for Migrant Domestic Workers Employed by Foreign Diplomats in Ireland: Time for Reform*, 47 (December 2010).

⁴⁶ UN, Committee on Migrant Workers 2011: *General Comment on Migrant Domestic Workers*, 49 (CMW/C/GC/1, 23 February 2011).

⁴⁷ ICCPR, *supra* note 9 at Art. 17.

⁴⁸ *Osman vs. Denmark*, App. No. 38058/09, Eur. Ct. H. R. (2011).

threatens of rape and physical abuse⁴⁹ has infringed their freedom of movement⁵⁰ and social security⁵¹. There is absence of laws specifically entitle domestic workers to maternity leave⁵² and/or protection from termination.

Powerful economic and legal forces have ensured that domestic workers remain exploited.⁵³ Domestic workers with A-3 or G-5 visas are obliged or tied to one employer no matter how abusive.⁵⁴ These workers are particularly vulnerable to misuse because domestic jobs are less visible, less formal, and subject to fewer legal protections.⁵⁵ Private servants working in diplomatic households are not in a position to negotiate favourable terms and conditions of employment or raise employment-related complaints through the employment tribunal system.⁵⁶ Neither are they authorized to change their employer, nor even within the domestic work sector.⁵⁷ According to their visa obligations if they leave their employment situation, they lose their immigration status and can be deported. This tool is abused the most by employers threatening their workers with deportation.⁵⁸

Even though it is well settled that when the exploitation of domestic workers amounts to slavery⁵⁹, the victims' human rights in those situations will precede over diplomatic immunity; the obligation to accord immunity foreign States does not essentially necessitate the suspension of access to justice with regards to the acts of torture involved.⁶⁰ Thus, there still lies a dire need to impose human rights on States to offer alternative ways to justice for victims, be it by making available alternative complaint mechanisms or by providing compensation to the victims.

LEGAL PROTECTION TO DIPLOMATS

Despite proper guarantees of legal safeguards, these workers frequently encounter difficulties in exercising their rights and in enforcing fair working conditions,⁶¹ while the availability of such vulnerable. When these victims seek justice, their employers' diplomatic immunity, acknowledged in VCDR⁶², comes into play, barring criminal, civil and administrative

⁴⁹ ICCPR, *supra* note 9 at Art. 12; Manfred Nowak, *supra* note 8, at 12.

⁵⁰ ICCPR, *supra* note 9 at Art. 9.; UDHR, *supra* note 11, Art. 1.

⁵¹ ICESCR, *supra* note 26, Art. 9

⁵² Convention on the Elimination of All Forms of Discrimination against Women, Art. 12, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980) [hereinafter CEDAW]

⁵³ Satterthwaite Margaret, *Beyond Nannygate: Using Human Rights Law to Empower Migrant Domestic Workers in the Inter-American System*, 5 of New York University Law School Press, (2006).

⁵⁴ Krista Friedrich, *Statutes of Liberty?: Seeking Justice Under United States Law When Diplomats Traffic in Persons*, 1139, 1155 (72 Brook. L. Rev., 2007).

⁵⁵ Manfred Nowak, *supra* note 8, at 3.

⁵⁶ Jose Maria Ramirez, *supra* note 24, at 44, 66.

⁵⁷ Immigration Rules, U.K., Para 245ZR(h)(iv).

⁵⁸ Helma Lutz, *Gender in the Migratory Process*, 1647, 1656 (36 J. Ethnic & Migration Stud. 2010); Judy Fudge, *Global Care Chains: Transnational Migrant Care Workers*, 63 (28 Int'l J. Comp. Labour L. & Indus. Relations, 2012).

⁵⁹ Ivy C. Lee, *Human Trafficking from a Legal Advocate's Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 U.C. DAVIS J. INT'L L. & POL'Y 169, 192 (2003).

⁶⁰ CAT, *supra* note 26 at Art. 7.

⁶¹ Jennifer Gordon, *Transnational Labor Citizenship* 503, 553–56 (80 S. CAL. L. REV. (2007))

⁶² VCDR, *supra* note 34 at Art. 32.

jurisdiction as the enforcement of judgments in the host state. Despite diplomats' full immunity from criminal prosecution, receiving governments are not completely powerless to hold diplomats accountable. It is rather possible to hold diplomats criminally liable, but prosecution requires a waiver of immunity by the sending state. This has invited extensive criticism that host countries lack the courage to request waivers of immunities and declare abusive diplomats *personae non gratae*, rather they have continued to save their consulates and diplomats from jurisdictions.⁶³ India itself had refused the United States' request to waive the diplomatic immunity of senior diplomat Devyani Khobragade. The very nature of diplomatic immunity implies that diplomats are exempted from the jurisdiction of the host country's authorities.⁶⁴ That means a substantial restriction of the possibilities of private domestic workers to access justice against their employers. Nevertheless, it should be kept in mind that persons enjoying diplomatic privileges are not exempted from the duty to observe the host country's laws, but that merely legal proceedings are barred for the time immunity exists.⁶⁵ Further Article 31 of the VCDR⁶⁶ provides that diplomatic agents shall enjoy immunity from jurisdiction, i.e. criminal jurisdiction of the receiving State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in cases relating to private immovable property situated in the territory of the receiving State.⁶⁷ Article 31(1)(c)⁶⁸, is an exception to civil immunity, has been interpreted as excluding from its scope ordinary contracts 'incidental to life in the receiving state', such as a contract for domestic services.⁶⁹ Even if practical legal measures⁷⁰ have been undertaken in providing the right to a right to free counsel⁷¹ for those in need in criminal, but not civil cases⁷², has been granted to domestic workers, the immunity leaves them powerless without any legal recourse. These were regarded as failing to reflect the workers' entitlements to fend for themselves out of their slave like situations and the severity of rights violations experienced.⁷³

LEGAL DEVELOPMENTS TO PROTECT MIGRANT AND DOMESTIC WORKERS

At the level of the United Nations, CEDAW⁷⁴ has raised the issue of abuse, violence and other forms of discrimination against women migrant domestic workers perpetrated by

⁶³ UN Human Rights Council, Report of the Special Rapporteur on *Contemporary forms of slavery, including its causes and consequences*, 57, 58, 96 (Gulnara Shahinian, A/HRC/15/20, 18 June 2010).

⁶⁴ Emily Siedell, Swarna And Baoanan, *Unravelling The Diplomatic Immunity Defense To Domestic Worker Abuse*, 173, 177 (Maryland Journal of International Law, Issue 26, 2011)

⁶⁵ VCDR, *supra* note 34 at Art. 41 (1).

⁶⁶ VCDR, *supra* note 34 at Art. 31.

⁶⁷ *Id.*

⁶⁸ VCDR, *supra* note 34 at Art. 31.

⁶⁹ Malcolm M Shaw, *International Law*, 767 (Cambridge University Press, 6th Edn, 2008); *Tabion vs. Mufti* 73 F.3d 535

⁷⁰ ILO, Recommendation concerning Decent Work for Domestic Workers (R201), adopted 16 June 2011 (India has not ratified the convention).

⁷¹ United Nations, Int'l Human Rights Instruments, Human Rights Comm. Gen. Comment 13, Art. 14, UN Doc. HRI/GEN/I/Rev.1, at 14 (1994).

⁷² ICCPR, *supra* note 11 at Art. 14(3)(d).

⁷³ Raven Lidman, *Civil Gideon: A Human Right Elsewhere in the World*, 40 (Clearinghouse Review 288 (2006)).

⁷⁴ CEDAW, *supra* note 53, at Art. 12.

diplomats while enjoying diplomatic immunity as an obstacle to ensure women's access to justice.⁷⁵ Notwithstanding the adoption of the ILO Workers Convention in 2011⁷⁶, migrant domestic workers still remain particularly vulnerable to employment-related abuse and exploitation.⁷⁷ Nonetheless, India has repeatedly indicated that, because of the special situation of government servants, it is currently unable to consider ratification.⁷⁸ More recently, the UN Special Rapporteur on Contemporary Forms of Slavery⁷⁹ in the latest report to the Human Rights Council explored how the specificities of domestic work as an industry has put domestic workers at risk of economic exploitation, abuse and domestic subjugation.

Even in India the need for a law to enforce the human rights of domestic workers is being felt strongly. However, the attempts to implement such a law have been in vain.⁸⁰ The Domestic Workers Welfare and Social Security Act, 2010, highlighting the exploitative nature of domestic work by spurious placement agencies, addressing the working conditions of domestic workers, including their registration⁸¹ is yet to be passed. Moreover, India is yet to sign and ratify certain crucial conventions and treaties, the failure to which has resulted in exploitation by Indian diplomats in foreign land.⁸²

RECOMMENDATIONS AND CONCLUSION

It is true that an ideal state of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone, regardless of their statehood, enjoy economic, social, cultural, civil, and political rights. However with a few rights, little freedom, frequent abuse the global plight of domestic workers can only be curtailed with an adequate human rights protocol that will positively combat abuse, exploitation and trafficking of migrant workers of today.

Thus, in the absence of an appropriate statute, the authors recommend certain requisite policies which if implemented will be fruitful in order to curb this iniquity –

⁷⁵ CEDAW, *supra* note 53, at Arts. 15, 16.

⁷⁶ Convention Concerning Decent Work for Domestic Workers, (ILO No.189), adopted at the 100th session of the International Labour Conference, Geneva (2011).

⁷⁷ David Weissbrodt, *Protection of Non-Citizens in International Human Rights Law, International Migration Law: Developing Paradigms And Key Challenges* 221, 229 (Ryszard Cholewinski et al. eds., T.M.C. Asser Press 2007)

⁷⁸ ILO, Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection 52 (Geneva; ILO, 2013).

⁷⁹ Report of the Special Rapporteur on Contemporary forms of slavery, *supra* note 64, at 57; A. Rassam, *supra* note 39, at 816.

⁸⁰ G. S. Sampath, *Who will help India's domestic helps?* Wall Street Journal, Oct. 31, 2013, available at <http://www.livemint.com/Opinion/Bj0ZhynE5rIO3zF3KntzkL/Who-will-help-Indias-domestic-helps.html>

⁸¹ Smriti Singh, *No progress on law to protect domestic helps*, The Times Of India, Oct. 30, 2013 available at <http://timesofindia.indiatimes.com/city/delhi/No-progress-on-law-to-protect-domestic-helps/articleshow/24892532.cms>

⁸² The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 26; ILO Convention Concerning Decent Work for Domestic Workers, *supra* note 34; ILO, Recommendation concerning Decent Work for Domestic Workers, *supra* note 81; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the Migrant Workers Convention, *supra* note 5.

- 1) Bestowing citizenship and nationality rights within the migrants will encourage their naturalization into the state which will result in least arbitrational interference of a sovereign state in such matters. This will be measure to combat statelessness of the migrants and will consequently help them achieve full enjoyment of the social, political, cultural, labor, and other rights. This right should also include the right to hold property, so as to protect workers against unregulated section of their employment.
- 2) Protection of their family rights is another aspect which has been ignored by the policymakers. The right to family is as important as right to life with dignity and such biological ties and mutual dependencies cannot be curbed by hampering their movements. It is therefore necessary to recognize the significance citizenship which does not prevent children from joining their parents in both the state of origin and the hosting state.
- 3) Labor rights coupled with the right to prosecute are the key to protection of vulnerable migrants from abusive working terms and conditions. This human right instrument if enforced will ensure vigilance and diligence on part of the State to address the issue reinstating fair work environment. Domestic workers should also be allowed to switch within the diplomatic community. Also this right should be granted regardless of statehood.
- 4) Adequate counselling and access to support should be provided to those who have experienced human rights violations. Governments, in consultation and cooperation with relevant NGO's should ensure proper implementation of existing procedures to regulate the admission of domestic workers and the monitoring of employment relationships.
- 5) Equal protection of law in the host country itself would be highly advantageous in situations where discrimination and arbitrary detentions creep in. The right to be treated equally must be consistent for citizens as well as migrants. Therefore, the access to criminal and civil complaint mechanisms, and equal access to courts of law and administrative processes will be the direct consequences of such equality.

On a positive note, it is likely that the duty to provide access to court in respect of torture claims will gradually gain in weight and dictate the applicable rules in more and more cases. It is vital to put aside the apprehension of a shrinking political independence by increased access to justice against the responsible official or state. Hence, in the light of the above, if all the ambiguities and breaches of law are decisively clarified these concerns can be effectively notified.