

PROTECTION OF WOMEN DOMESTIC WORKERS – A SOCIO-LEGAL STUDY

(WITH SPECIAL REFERENCE TO VISAKHAPATNAM CITY)

*Thesis submitted to Andhra University, Visakhapatnam
for the Award of the Degree of*

DOCTOR OF PHILOSOPHY IN LAW

By

PRATIMA JEGGUMANTRI

M.A., M.B.A., LL.M.



Under the Guidance of

Prof. (Dr) N. NIRMALA

M.L., Ph.D.

Research Director
Dr. B.R.Ambedkar College of Law
Andhra University
Visakhapatnam

**DR.B.R. AMBEDKAR COLLEGE OF LAW,
ANDHRA UNIVERSITY, VISAKHAPATNAM
2019**

CHAPTER 7

CONCLUSION AND SUGGESTIONS

SUMMARY:

A large number of domestic workers in India are uneducated, women and children. They are denied workers' compensation, weekly holidays, periods of rest, and minimum wages. Legislations and policies dealing with informal labour such as the Workmen's Compensation Act 1926, the Inter-State Migrant Workers Act 1976, the Payment of Wages Act 1936, the Maternity Benefit Act 1961, the Equal Remuneration Act 1976, the Employee's State Insurance Act, and the Unorganized Workers' Social Security Act 2008, have not been able to extend adequate protection to the domestic workers.

The Domestic Workers Convention, 2011 (No. 189). The Convention recognizes that domestic work is work and that domestic workers are, like other workers, entitled to decent work.

The government has to amend the following legislations in order to extend the benefits and protection to the domestic workers: *The Minimum Wages Act, 1948, The Maternity Benefit Act, 1961, Workman's Compensation Act, 1923, Inter-State Migrant Workers Act, 1979, Payment of Wages Act, 1936, Equal Remuneration Act, 1976 and the Payment of Gratuity Act, 1972.*

Several attempts to have a national legislation for domestic workers have been made. Currently, different organizations and campaigns are working towards different draft bills. These are under the aegis of the National Commission of Women, National Campaign Committee for Unorganized Sector Workers, SEWA and recently by the Domestic Workers Rights Campaign (DWRC). Various draft bills deliberate on the registration of workers, employers and agencies, regulation of work and wages, social security and enforcement mechanisms.

Various non -union form of organizations play an important role – providing a safe and suitable place for domestic workers to seek advice, have access to information, share experiences and engage in collective activities and mobilization.

For decades, trade unions have been campaigning for recognition of domestic work as a form of labour. Their persistent efforts resulted in some states initiation of legislation. Both Andhra Pradesh and Karnataka" have included domestic workers in the purview of Minimum Wages Act. Tamilnadu has included domestic work in the Manual Labour Act, 2007 and set up the Domestic Workers' Welfare Board. Kerala has taken some steps in this direction, as have Bihar and Rajasthan. The Central Government has included domestic workers under the Unorganized Sector Workers' Social Security Act, 2008 and now Maharashtra has passed its own law. Most labour laws face the challenge of implementation.

There has been an attempt at creating a legislation within the country in the form of '**Domestic Workers Welfare and Social Security Act, 2010 Bill**', drafted by the National Commission for Women (NCW) which attempted to bring Domestic Workers into the mainstream about the unpaid wages, starvation, inhumane work hours and verbal, physical and sexual abuse. Proposed law was meant for the Domestic Workers above 18 years of age and clearly stated that no child shall be employed as a domestic worker. But this Bill has not came into effect.

At Global level there are many examples of domestic workers' self organized unions, including the South African Domestic, Service and Allied Workers' Union (SADSAWU). These are usually the result of domestic workers' struggle to organize themselves, sometimes with the support of an NGO or a trade union federation. **State Governments of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan and Tamil Nadu** have taken several steps to improve working conditions of Domestic Workers and to provide access to the Social Security Schemes.

CONCLUSIONS:

Domestic Workers are unprotected workers in the sense that while all the workers are yet to be identified and hence do not get the protection of several legislative provisions. Thus Minimum Wages Act (1948), Equal Remuneration Act (1976), Interstate Migrant workmen Act (1979) Bonded Labour System (Abolition & Regulation) Act (1970) etc. are all there, but do not cover, all these workers. Secondly implementation of these Acts is also a very big problem for want of adequate Government machinery. Thirdly even trade unions have not been able to look after these workers, to the extent necessary, through these protective measures.

Insecurity and constant fear of termination makes domestic workers silent victims of the certain undemocratic work practices.

Many factors lead women to enter domestic work as the women are from poor households or disadvantaged communities and they often have few employment opportunities. They may face discrimination based on gender, caste or class, race or ethnicity. Cleaning, cooking, and caring for children and the elderly is almost universally regarded as women's work, so men rarely compete in this job market. Low levels of education and few marketable skills also play a role. However, rural poverty has increased in many countries, causing young women to move to urban areas in search of employment. Therefore, most of the women are employed in this work.

The extreme dependency on an employer, combined with the lack of rights and the isolated and unprotected nature of domestic work, can render domestic workers vulnerable to exploitation and abuse. In the case of migrant domestic workers, in particular, their often precarious legal status in the destination country, and their lack of knowledge of the local language and laws, make them especially vulnerable to abusive practices. Reports of physical and sexual violence, psychological abuse, non-payment of wages, debt bondage and abusive living and working conditions are also frequent in many countries.

In recent years, increased mobilization by migrant, women, and human rights organizations, support from trade unions, attention from international bodies like the

International Labor Organization (ILO), and high-profile media exposure have intensified pressure for government action, including labor and immigration reforms.

Labour legislations in India show that the domestic workers are not included in scope of several labour laws because of the constraints in definitions of -'workman', -'employer' or -'establishment'. Nature of their work, specificity of employee-employer relationship and workplace being a private household instead of a public place or private establishment, excludes their coverage from the existing laws. Even Placement Agencies escape from ambit of the labour laws, because of such definitional issues¹⁶⁸.

The efforts of Non Government organizations and activists has led to the inclusion of domestic workers in Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982' and the Unorganized Workers' Social Security Act, 2008 (Act 33 of 2008)' as well as the passing of the Maharashtra Domestic Workers Welfare Board Act 2008'.

India has only two laws that, 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 working women in general. Neither of these recognizes domestic helps as rights-bearing workers.

Domestic workers are hired by third-party agencies or brokers. There are sometimes linked to criminal activity, and charge the domestic worker a lot of money, promising services which are never delivered. Therefore, the government should establish an employment bureau for recruitment of domestic workers. The Domestic Workers are also caught in trap of the agents who supply them to the placement agencies or even harass or traffic them for other forms of forced labour is a reality.

Various NGOs have worked to put an end to countless problems of women but it has not helped to root out the problem up to expectation level. In a democratic form of

polity it is easy to lay down the legislative support to prevent every social evil but still its effective implementation is not easy task. The Indian legal system has legislated various welfare, protective, prohibitive enactments to provide the ultimate justice to the masses but it can met with success only when the active participation of some organisations apart from governmental representation, is strong. Few NGOs are contributing for this purpose but it is not successful.

In total, the failure of the government to regulate domestic work has given the absolute power of regulation to the employers resulting in perpetual exploitation of the labour class.

TEST OF HYPOTHESIS

Hypothesis is specific statements regarding the relationships between variables and is derived from more general theories. A research hypothesis states an expected relationship between variables in positive terms. Therefore, hypothesis is a statement which is plausible but need to be tested through the studies in a scientific manner. At this juncture the test of the hypothesis of this research work is as follows:

- I. The first hypothesis in the present study is *“Domestic Workers are working in a very appalling condition of work without job security, social security and adequate wages.”*

Domestic workers are facing a lot of problems in their workplaces like low wages, lack of job security, longer hours of work, as there is no emergency leave benefit, discrimination in caste and untouchability. Poor women are forced to migrate to cities and foreign countries in order to supplement their families’ meager incomes. Many women travel abroad to send money back home in an effort to improve their quality of life in India. However, in travelling abroad, they become vulnerable to corrupt recruitment practices, lack of work contracts, withheld salaries. Live-in domestic workers experience greater isolation, less privacy and more limited mobility. Living conditions are frequently sub-standard. They are also more vulnerable to physical/sexual abuse by employers. Migrant

domestic workers often live in the employers' home, facing not only the challenges of live-in domestics but also abuses within the recruitment system and from police and immigration authorities, including advance commission fees, withheld wages, and verbal, physical, or sexual harassment. Brokers face the challenges of domestic workers, but these are compounded by the extra-legal operations of their recruiters and the near-bondage conditions they may live in. Some recruiters keep the workers' certificate for such a long time for their demands.

After in depth study of the Acts, rules, regulations and the responses given by the respondents during the empirical study which has been reflected in Question numbers: 8,9,23,30 from the Women domestic schedule, Question numbers: 8 from the common schedule and Question numbers: 4, 16 from the Judges, Advocates, Police, NGO schedule, it can be concluded that though the workers were receiving benefits from the government through various schemes it has not enhanced their economic status. The Domestic workers were not satisfied with the work and the payment they receive. They are paid low and were exploited by the Employers. They don't even have a written contract with regarding to the terms of working conditions. The root cause for the vulnerable conditions of the Domestic workers is due to Lower status, Lack of amenities at work place, Lack of job security, Low wages, Unfavourable terms of work. There is a need to bring social security legislations which provides medical, gratuity, PF and other kinds of benefits so it would help the living Conditions of the Domestic workers.

With the above discussion and support of the respondents, it can be concluded that this hypothesis stands proved and accepted.

II. The Second hypothesis in the present study is *‘There is no exclusive legislation for the protection of Domestic Workers’*

In spite of number of initiatives made by the Indian State in enacting an exclusive legislation for the protection of Domestic Workers, it could not succeed in bringing at least one such exclusive legislation into effect. For instance, for the last one decade the following abortive attempts were made: Domestic Workers (Registration, Social Security and Welfare) Act, 2008; Domestic

Workers Welfare and Social Security Act, 2010; In 2010, the National Commission for Women (NCW) came up with a bill called ‘Domestic Workers Welfare and Social Security Act, 2010’. However, the bill failed to achieve much in empowering the domestic workers; Domestic Workers Welfare Bill, 2016; Domestic Workers (Regulation of Employment, Conditions of Work, Social Security and Welfare, 2017. These attempts and repercussions have been exhaustively discussed in Chapter IV of the research study.

After a deep analysis of the current legislations and the responses given by the respondents during the empirical study which has been reflected in Question numbers: 4 from the common schedule where all the respondents stated there is a need to bring a special and exclusive legislation to protect the Domestic workers from all kinds of exploitations.

With the above discussion and support of the respondents, it can be concluded that this hypothesis stands proved and accepted.

III. The third hypothesis in the present study is ‘The applicable protective provisions of the existing labour legislation in favour of Domestic workers are not being properly implemented’

Legislations and policies dealing with informal labour such as the Workmen's Compensation Act 1926, the Inter-State Migrant Workers Act 1976, the Payment of Wages Act 1936, the Maternity Benefit Act 1961, the Equal Remuneration Act 1976, the Employee's State Insurance Act, and the Unorganized Workers' Social Security Act 2008, have not been able to extend adequate protection to the domestic workers¹⁷⁰.

Unorganized Workers' Social Security Act, 2008 is the only Act which has extended protection to the Domestic Workers. But it could not be properly implemented. In February, 2018, the Apex Court ordered the Union Labour Secretary to make certain the registration of domestic workers must begin from February, 2018. "We make it clear that the process of registration will include not only the registration but also the issuance of

¹⁷⁰ Statement of Objects and Reasons, the Domestic Workers Welfare Bill, 2016

identity cards and extension of other benefits," directed the court, asking the Labour Secretary to submit a status report by May 15, 2018. But still so far the Directions of the court were not brought into implementation. On these lines it has been exhaustively discussed in chapter – IV of the research study.

After a deep analysis of the current legislations, rules, regulations, Judicial guidelines and the responses given by the respondents during the empirical study which has been reflected in Question numbers: 3 from the common schedule where all the respondents stated that the present legislations are not adequate to protect the Domestic workers there is an implementation lacuna.

With the above discussion and support of the respondents, it can be concluded that this hypothesis stands proved and accepted.

IV. The fourth hypothesis in the present study is *Domestic Workers in informal sector are generally vulnerable to physical and mental abuses especially Women and Child Domestic workers*

Women and girls employed as domestic workers around the world face an appalling array of abuses. Domestic workers, at risk of rights violations during recruitment, placement and employment, are often in situations that prevent them from reporting abuses. Comprehensive and proactive strategies are needed to provide oversight of labor agencies and recruiters, monitor working conditions, detect violations, and impose civil and criminal sanctions on abusive agencies and employers.

Tasks involved in domestic work are seen as –women’s work, and so are considered of low status and value and tasks such as gardening, driving, or guarding have higher status and are typically performed by men.

Sexual Harassment is still an unspeakable issue for domestic workers as it is with women from the different stratum of the Indian society.

The labour and employment ministry is set to give legal status to domestic workers in the country by formulating a national policy that will ensure minimum wages and equal remuneration for around 47.5 lakh domestic workers in India including 30 lakh women.

The above aspects have been discussed in chapter number II and IV of the research study.

After the discussions made with different segments of respondents and the responses given by them during the empirical work which has been reflected in Question numbers:

25 from the Domestic workers Schedule, Question numbers: 11 from the common schedule, Question numbers: 6,7,8,9,12,14 from the Judges, Advocates, Police, NGOs schedule, Question numbers: 11 from Employers schedule it was stated by majority of the respondents that eventually Physical abuse sort of cases were being filed by the Domestic workers. ‘Theft and Misappropriation’ cases were being filed against Domestic workers. There are more abuses on child domestic workers especially girl child. People engage child domestic workers as they are cheap source of labour, has high efficiency in work when compare to adults, obey the directions of employer and they don’t have the knowledge to complain. They are deprived of their rights, especially right to education. Even children below 14 should not be allowed to work at all, even in own family business. There is need for compulsory registration of domestic workers for the sake of prevention of abuse either on employers or domestic workers

With the above discussion and support of the respondents, it can be concluded that this hypothesis stands proves and accepted.

V. The fifth hypothesis in the present study is ***‘There is no specific redressal mechanism for domestic workers grievance.’***

The two landmark cases of the apex court viz., Bhachpan bhachao case and Papamma case which are discussed under chapter II and V reflect the need for redressal mechanism. It is also reflected throughout the research study.

After the discussions made with different segments of respondents and the responses given by them during the empirical work which has been reflected in Question numbers:

34, 35 from the Women Domestic workers schedule, Question numbers: 10 from the common schedule, Question numbers: 15 from the Judges, Advocates, Police, NGOs schedule, majority of the Domestic workers do approach their relatives for redress as there is no redressal mechanism to solve the problems of the Domestic workers. Majority of the Domestic workers were not a member of any unions to put up their collective bargaining for their protection of rights. The respondents strongly supported that there is a need to have monitoring agency for regulating the working conditions of domestic workers.

With the above discussion and support of the respondents, it can be concluded that this hypothesis stands proved and accepted.

SUGGESTIONS:

After analyzing the core chapters and the empirical study of the research topic the researcher ventures to make the following suggestions to be considered by the Government officials, Trade unions, Nongovernmental organisations and the members of the civil society for the purpose of taking into consideration while taking policy decisions\ strategies to be adopted for the protection of the domestic workers.

1) Legal Protection to the Domestic workers:

Extend equal protection of the labor laws to domestic workers, including rights to a just wage, overtime pay, weekly rest days, benefits, and workers' compensation. The domestic workers should be covered under all legislations:

Universal pension for workers upon retirement such as Employees Provident Fund (EPF) and Employee State Insurance (ESI) as also gratuity-there should be mandatory contributions from employers but only nominal ones from employees

Medical coverage, insurance and access to medical institutions under these Occupational Health and safety compensation-a protection net for covering medical expenses for injury, diseases at workplace, and occupational health and sickness allowance.

2) Enactment and Implementation of Legislation – Responsibility of the State:

The State has to enact legislation, make amendments, promulgate Acts and issue notifications, to recognise the rights of domestic workers and ensure their protection. The State is seen to be primarily responsible for the implementation, enforcement and monitoring of the mechanism for decent work of domestic workers and the establishment of infrastructure and institutions to achieve the goal of decent work of domestic workers.

Appropriate mechanisms need to be put in place to ensure they operate within Government set norms and procedures. There is a need to look at this problem as a labour issue and involve labour/trade unions in the discussion of this issue.

3) Access of justice and Empowerment of Domestic Workers

An effective access to courts, tribunals or other dispute resolution mechanisms¹¹ is another necessary element for strengthening the right of domestic workers to just and favourable working conditions.

Empower domestic workers to fight against all forms of injustice and discrimination. Government should establish networking at local, national and international levels for policy and legislative induction of domestic workers. Need based

training on capacity building and empowerment of domestic workers for participation in the struggle for justice.

4) Women Domestic Workers:

At present, domestic work stands as a readily-available livelihood option for millions of women. While a large number of women are engaged in this sector, it is important to look at the working conditions that exist in this sector. Fixing minimum wages providing weekly days off and paid annual leaves, protecting from physical and sexual abuse and ensuring social security, are key issues that need to be addressed by the government nationally, and across Indian states.

The problems of Domestic Women Workers are enormous and hence needs immediate attention. Not only the Government, but also the entire society through NGOs, Trade Unions, and such others are required to take initiatives and suo motto act in the search of solutions to alleviate the problems through appropriate forums.

5) Protection of Child Domestic Workers:

Provision of child care (for their own children) in the vicinity, day care and education facilities for older children; provision of education, training and skill development for enhancement of capabilities of domestic workers; provision of housing subsidy, transportation subsidy, and allowances/grants for education and housing.

Prioritizing the elimination of the worst forms of child domestic labor and, with the assistance of the International Labour Organization, instituting a Time-Bound program to eliminate the worst forms of child labor;

Strictly enforcing fifteen as the minimum age of employment for all sectors, including domestic labor; Investigating promptly all complaints of hazardous child labor.

Enact specific regulations governing minimum age of employment, hours of work, forms of labor likely to be harmful to children, corporal punishment, entitlement to rest and leisure, and compensation.

6) Placement Agencies:

There is a need to bring the placement agencies under the jurisdiction of the Labour department like any other Contractor by advocating before the government for a Comprehensive legislation to protect Domestic Workers and negotiate with the Employer for the rights of Domestic Workers through a standard setting mechanism.

The need for monitoring the placement agencies arises as many of the placement agencies are functioning illegally. It is difficult to trace such agencies in the event of an exigency or complaint of a domestic worker. The young girls are exploited economically as well as sexually by these agencies; hence the need for regulation and call for accountability of these agencies.

7) Role of NGOs\Trade Unions:

Active participation of NGOs and Central trade Unions should be encouraged for the management of such welfare schemes that are so made available to the workers. To form a tripartite group to review existing schemes, in order to discuss scope and coverage of various schemes, to make suggestions for extending schemes to all employees in organized and unorganized sector. This group should also consider financing and administration of schemes. This tripartite group should consider suggestions for removing existing shortcomings in various schemes and to curb corruption and remove administrative inefficiency causing delays and harassment to beneficiaries.

8) Law and Order Vs Rights Based Approach

Domestic work has enabled many women to enter the labour market and benefit from economic autonomy. However, this has not translated into gender equality. Worldwide, household responsibilities and unpaid care work continue to pose significant barriers to

women's labour market participation. On many occasions, ILO has argued the need to change the idea that care-giving is a private domestic responsibility unique to women.

A greater sense of social co-responsibility must be developed- first towards a redistribution of responsibilities between households, the market and the state, that is a shift toward society as a whole assuming responsibility for the process of reproducing the labour force; and second, towards redistributing reproductive work/unpaid care work between men and women, in line with the change that has already taken place regarding productive (paid) work.