Security of Domestic Workers Viz a Viz Social Security Code in India

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ABSTRACT

Domestic Worker is an undervalued section of labour force who are behind the success of a working family in urban society. This section of workers, particularly who are 'live in' domestic worker, are very prone to exploitation. The marginalized section of people works in a compulsive situation in as much as they work as domestic help or domestic worker because of poverty or having no option for livelihood. Despite existence of numerous international laws their grievances have not been redressed. Their conditions are almost similar. Different forms of exploitation are still in exist.

In India also few legislations have been made to deal with the issues connected with different kinds of 'labour force' in India. Among these Social Security Code is remarkable which provides social security to a section of workers under the statute. However, under this code also practically the 'domestic workers' have been denied social security. In this article attempt has been made to highlight as to how 'domestic worker' have been eluded from the purview of the legislation.

Keywords: Domestic Worker, Social Security, legislation and exploitation.

INTRODUCTION

Domestic worker, sometime called as 'domestic helps' is a section of people in the society who help in smooth running of the life of the people who contributes in the development of the country in different perspectives. 'Domestic help' are the people who works as domestic workers in divergent capacities in assisting the employer for the remuneration agreed upon by the employer and the employee.

House wife has been considered to be the home maker and 'the nation builder'[i] in as much as they are considered to be the person who brings up the child. In a well do family or in urban society, particularly for a family where both husband and wife are working personnels, the domestic worker are the hands behind the rearing child and management of household affairs in the family. They care others; but they are not cared in return. Their rights are being ignored. In urban society they constitute a strong workforce which contributes a lot by extending helping hands to the working families. Their rights and services are not considered in commensurate to their undervalued contribution to the economy in diverge perspectives. This is the background of the issue pertaining to the domestic workers.

The sector is dominated by the female worker in as much as the nature of service expected to be rendered by this section of workers are primarily sweeping or cleansing house, washing clothes, cooking and caring of child which are normally done by female being. They are very vulnerable to exploitation. Stray incidence of sexual abuse, physical torture and mental abuse are found in the life of a domestic worker particularly who are 'live in' domestic workers. Deception in respect of calculation of monthly salary also happens in the life of some of the domestic workers. This happens in the case wherein the worker is a 'migrant worker' from remote village brought by distant relatives or professional providers of domestic workers in the state where no further contact of the supplier or provider is available. Such workers lead almost a captive live due to their lack of knowledge.

This section of people is sometimes exploited psychologically also. The employer gives them the 'used' fancy attire dubbing the 'article' in good condition and saying that these are being given out of love and affection. The worker also sometimes seen consoled by 'used' fancy attires as this are beyond their reach and they have got it only out of love of the employer as a token.

Another aspect of their way of life is privity of contract which is informal in nature. The terms and conditions remain almost in unwritten form. The duration of working hour depends on an informal contract. In respect of 'live in' domestic worker literally no time limit applies. However, their salary does not commensurate in terms of hour they render their service.

Importance of the Study

The International Labour Organisation (ILO) through its convention189 defines 'domestic work' as household chores such as sweeping, cleaning utensils, washing clothes, cooking, caring for children and any other work carried out for remuneration[ii]. Different international covenants have been made in different occasions among which the covenant of 2011 is remarkable. However, though India supported the move, but has not ratified the same. In the name of bringing welfare legislation for the benefit of 'labour force' including both organized or un-organised, India has brought out different laws like Labour Code, Wage Code and Social Security Code, even then grievances of the domestic workers have not been addressed.

Unfortunately, while issue was brought to the notice of the apex court[iii] of the country and the apex court constituted a committee to look into the matter as to whether separate law is needed to deal with the issues of the domestic workers, the Committee opined in a negative way vide its July, 2025 report by holding that all issues of domestic workers are covered under existing different laws like Code on Wages, 2019 which ensures minimum and timely wage standards; Code on Occupational Safety, Health and Working Conditions, 2020 regulates work environments while Code on Social Security, 2020 explicitly includes domestic workers by allowing access to health insurance, maternity benefits, and pensions via the e-Shram portal and Industrial Relations Code, 2020 provides mechanisms for dispute resolution. Instead of enacting new legislation, the panel recommended that the government should focus on better inter-ministerial coordination and strict enforcement of the existing Labour Codes.

Objectives of the Research

The issues of domestic workers have not covered under the existing laws. Therefore, there is a need to examine the issues. So, with the objectives as mentioned below the research has been carried out:

1. To know the primary issues of the domestic workers in general.
2. To examine the provisions of different Indian Laws presumed to have covered the issues of the domestic workers in India particularly the provisions of Social Security Code, 2020.
3. To examine lacunae of the existing legislations in dealing with the issues of domestic workers.

Research question

For systematic study on the matter the following research question has been framed:

"Whether existing laws in India practically provides social security to domestic workers in India".

DISCUSSION

Laws on Domestic Workers in other Countries

The ILO felt that the Migration for Employment Convention (Revised), 1949, the Migrant Workers (Supplementary Provisions) Convention, 1975, the Workers with Family Responsibilities Convention, 1981, the Private Employment Agencies Convention, 1997, the Worst form of Child Labour Convention, 1999, the Employment Relationship Recommendation, 2006 and the ILO Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a right based approach to Labour Migration, 2006

could not adequately address the grievances or issues of the domestic workers, as such in the year 2011 brought a comprehensive provisions under Domestic Workers Convention of 2011 providing certain rights to the workers.

On the other hand, different countries have separate domestic laws pertaining to issues of domestic workers few of which have been discussed hereunder.

In China a domestic worker (commonly referred to as *ayi* or 'auntie') is defined as a person employed by a private household or agency to perform regular household tasks. This encompasses cleaning, cooking, laundry, and specialized care for children, the elderly, or sick individuals. They are the person employed by a private household to manage daily affairs in a particular house. Some private employing agencies provide certain basic informal training through certain private institutions. However, they are not recognised as formal employment as private household is not recognised as employing unit under national laws.

In USA an individual who render service as nannies, housekeepers, care givers, cooks and family chauffeurs are considered as domestic workers. USA have a law to deal with the issues connected to the rights and remuneration for their work under Labour Standard Act made by the Federal govt. Apart from that, since federal legislation is not sufficiently covering all aspects of the matter the states have separate laws in their respective states.

The countries known as industrialist country also formalized the issues pertaining to domestic workers in as much as support staff in handling household works is essentially required.

Japanese have their law which regulates the rights of the domestic workers. They have minimum fixed remuneration pertaining to the services rendered by the worker depending on the nature of job. The domestic workers in Japan have got certain rights. Right to have a weekly break is one of the very important rights. They have to work only eight hours a day. In excess of it they are entitled to overtime pay for the periods they worked in the house. The law has fixed forty hours service for a week. To that count the matter has been regulated by the legislation.

Whereas some Asian countries even less developed in comparison to India like Thailand and Malaysia have made separate laws in respect of domestic workers. In Malaysia under Employment Act, 1955 the service of the domestic workers is regulated. The domestic worker gets one day off in a week.

Indonesia has Domestic Workers' Protection laws which exclusively deals with matters related to the employment and service conditions with certain minimum rights for the domestic workers in the country. Thailand also has got laws which provides minimum protection and certain rights to the domestic workers under national laws.

In India, as per Market Research Report, as many as 4.2million to 50 million workers are involved. According to government data, the total number of domestic and household workers registered in India stood at 28 million in July 2023.

Legally domestic workers are not getting their identity in as much as they are covered by the Social Security Code in India under the definition 'unorganized worker'. Section 2 (86) defines an 'unorganized worker' inclusive of a home-based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III (Chapter on EPF) to VII (Chapter on Employees Compensation) of the Code on Social Security, 2020[iv]. There is no separate law in respect of dealing with the issued particularly problems faced by the domestic worker.

Laws in India

Constitution of India provides fundamental rights under Part III of the constitution[v] including right to live and personal liberty under article 21 of the Constitution which encompasses right to live with human dignity[vi], right to development apart from the right to lead a decent life. Article 19(1)(g) speaks about right

to freedom of profession subject to reasonable restriction. On the other hand, article 23 provides rights against exploitation. It prohibits trafficking of human being and forced labour. Part IV of the Constitution of India provides certain powers to the state to make laws for the welfare of the citizens of the country. State is under obligation to make provisions for securing just and humane condition of work. Further, laws in respect of maternity benefit may also be made by the state.[vii]

Article 43 contains another important provision related to workers which provides that state shall endeavor to secure by legislation living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure. Article 45 directs state to make laws relating to equal pay for equal work irrespective of gender. Accordingly different social legislations have been made. However, India does not have specific law pertaining to 'domestic worker'. The Social Security Code, 2020 is an inclusive legislation. It randomly covers almost all domestic workers as 'unorganized worker' under unorganized sector of employment. Notably different nature of work deserves different rate of remuneration or salary. Other benefits also deserve difference in respect of service they are rendering on the basis of service condition. But no such difference has been kept in the Social Security Code. Instead, the Social Security Code has repealed the earlier legislations like Maternity Benefit Act, Employees' State Insurance Act, Employees Compensation Act, Minimum Wages Act, Provident Funds Act and the Social Security Act, 2008. On the other hand, different state govt. has fixed different kinds of remuneration for the service rendered on the basis of nature of service. Accordingly, remuneration as 'labour charge' has been classified and fixed as skilled labour, semi-skilled and non-skill. This basically relates to the charge fixed for the labour discharged by the male labour. Such charge has been classified as technical and non-technical. Such charge is fixed by the concerned dept. of respective Govt. In respect of the services rendered by the domestic workers such classification has not been made. In fact, this category of employee sometimes renders both technical and non-technical.

The Wage Code, 2019, is a consolidation of earlier Acts namely Minimum Wage Act, Payment of Wage Act, Payment of Bonus Act and Equal Remuneration Act. It has come into effect from 21th of November, 2025. It also does not cover the issues of domestic worker since these legislations are confined to the issues of workers of an 'establishment'. Since the 'family' which engages labour in the house in the form of 'domestic worker' is not looked upon as 'establishment', it does not include 'domestic worker'.[viii]

The Occupational Safety, Health and Working Conditions Code, 2020 also does not cover issues connected to the domestic workers. The Act basically deals with safety of workers in an establishment. Since particular 'family' cannot be considered as 'establishment', the workers rendering service in the 'family' cannot claim the benefit provided under the Code.

Sexual Harassment of Women at Workplace, 2013 covers the issues of domestic workers as it speaks of 'dwelling house' also apart from 'establishment or office' under the term 'Workplace' which includes 'house' or 'family'. The legislation provides punishment for the offence. Therefore, it is mere a penal law against the perpetrators. The offender is punished as per provisions of law. But the law does not guarantee any social security for the domestic workers. Unlike other category of workers, they are not covered by any welfare legislations like Employees State Insurance or Pension Schemes. The procedure provided under the statute is to approach the police in as much as the other mechanism provided for lodging complain may not be accessible to the victim as they are kept in a traumatic condition.

Social Security Code, 2020

Since the new Code pertaining to labour legislation has replaced certain legislations, the issues will now be dealt with under the provisions of the Code. However, as stated earlier the Code practically does not cover the issues related to domestic workers.

The Social Security Code provides for unorganized workers. However, since the issues pertaining to domestic workers are different to that of other unorganized workers, the provisions of the Code fail to address the grievances of the domestic workers. The provisions of Social Security Code deals with the formally engaged workers of a workplace. Since practically the domestic workers are engaged by the

employer on the basis of an informal agreement, sometimes even on the basis of 'understanding' between the two parties, if responsibility arises on the part of the employer, be it payment of the share of contribution of welfare fund or whatever may be the name and nature of the fund, the employer evades the responsibility. As such the benefit of welfare schemes whatsoever may be mentioned under the Code becomes beyond the reach of the domestic worker. Further, for the benefit of building workers, who are very unorganized in nature and requires special treatment, the Code has provided specific provision for that section of people. For them, it is provided that a separate board is to be constituted. So, specific provisions are there to deal with the issues of building workers. As per provisions of the Code, they can enjoy insurance, pension and many more benefits which emerge from the schemes created under the provisions of the Code wherein the employer has to contribute for the respective funds or schemes. Apart from that it is noteworthy to mention here that even separate 'cess' has been introduced for the benefit of the building workers. The Code provides for constitution of State Building Workers' Welfare Board. In such situation the Code should have provided for such Board for domestic workers also as the problem relating to the domestic worker are not similar to others.

On the other hand, though the domestic workers are also a section of unorganized section of workers, but their employers cannot be held responsible for creation of such Welfare Fund for them in as much as if the matter has been brought to the notice of the employer, them the employer may, if required release or disengage from the job. In respect of retirement benefit to be enjoyed by the employee on completion of continuous service under the provisions of the Code, the employer of domestic worker will not allow to complete five years continuous service and instead disengage the employee prior to completion of five years. In this way the worker may be deprived of the benefit.

With regard to Employees Provided Fund also the domestic workers may not avail the benefit as because they may not be able to fulfill the conditions prescribed for the benefit.

Under Social Security Code expected benefits emanated from the Social Security Code in India is not the benefit provided by the Govt. Rather it is a mechanism created out of the contribution by the employee. The employee has to contribute certain amount wherein the employer will also contribute the sum of amount as prescribed under the law.

Above all, the term 'employer' as mentioned in the Code itself does not cover the 'employer' of the domestic worker in as much as the Code provides for employment in the 'establishment' under section 2(27). The 'house' of a person for the purpose of engagement of domestic worker in the house will definitely not come under the term 'establishment' as defined under section 2(29). They are not covered under the definition of 'home based worker' as mentioned under section 2(36) which means "a person engaged in, the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs". Apart from that the term 'unorganized worker' as defined under section 2(86) also does not include the 'domestic worker' in as much as it means 'a home-based worker' as defined under section 2(36), self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by the Industrial Dispute Act, 1947 or Chapters III to VII of this Code.

While by reading the definition of the term 'wage' as provided in Section 2(88) it becomes very clear that the 'wage' or remuneration or salary paid to the domestic worker may not be read similarly since in respect of domestic worker usually they do not entitle any 'basic pay' or 'dearness allowance'.

However, the term 'Social Security' as defined under the Code covers wide definition which states that 'Social Security' means 'the measures of protection afforded to employees, unorganized workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in case of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under the Code'. But practically the domestic workers do not enjoy the benefits under the Code.

CONCLUSION

Provisions contained in different legislations in India do not cover the undervalued 'labour force' in the form of 'domestic worker' as discussed above. The problems faced by the domestic worker are not similar to those of the other labour force which are governed by the Social Security Code. They are very vulnerable in terms of their security. The conditions of 'live in domestic worker' is more vulnerable in comparison to other contracted domestic workers. Sexual harassment, or other form of abuse are common to some of the 'live in' domestic workers. For compulsive situation they refrain from complaining the abuses in as much as the consequent situation often appears to be more aggravating in the life of some of the workers. Since there is no specific law to deal with the issues connected to the domestic workers bringing out a comprehensive legislation is an imperative to address the issues of domestic workers.

In this respect mere govt. initiative will not be able the deal with the issues. Therefore, the agencies or suppliers, NGOs are to be involved in framing the comprehensive legislation. Simple, easily accessible and common electronic mechanism should be introduced. Issues should be dealt with under the supervision of a lady magistrate where the aggrieved party may be able to lodge the complaint instead of approaching the Police station. The agencies, service provider or labour suppliers should be assigned the responsibility of putting the details in the portal to be created as part of electronic mechanism. Every detail of the workers should compulsorily put in the portal by the supplier or the employer. Failure or evasion of such procedure should be held liable for an offence and should be punished. For non-compliance of procedure both the parties should be held liable for punishment. Therefore, registration of the worker either by the supplier or the employer with full detail requires to be made compulsory. Certain welfare schemes for the workers should be framed.

The stake holder should work on the matter so that the issues pertaining the rights of the domestic workers may be addressed and the social responsibility towards a weaker section of the society may be discharged.

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