

We received a phone call from Mr.Pankaj Sethi,C-121,Maharna Pratap enclave, he told that he got information about our organisation's work and he told that he needs our help that a girl(Domestic Worker) who came to his house through a jamadar, and they got information from that girl(Dw) she is from ssam, and working since four year as domestic Worker in 374,Sd Block,Pitam Pura.

After the information form Pankaj Sethi our staff Bibyani Minj and Ishwar Sharma went to the house of Pankaj Sethi and Salmi came to our organisation.

When I talked with her she tols me that she was working since four year in the house of Mr.SanjeevHouse No-374,SD Block,Pitam Pura, thre are four members of family two children and Mr Sanjeev and his wife.HMr.Sanjeev have the car show room KD Block, Pitam Pura.

Salmi came to Delhi with 30 Years phillip with the consent of her family ,she has one younger brother and one elder sister and one younger sister and there are her mother and father.

She has enough agriculture land ...for paddy and other and according to her opinion there was not such financial problems for foodings...or anything but she came only for her interest, she with Phillips with another one girl and two boy , phillip placed her directly in the employer's house.

She knows that she came for domestic work so she did not surprised ...that she ias going to engaged as domestic work...but she did not know about her salary, and after she engaged in domestic work phillip never contact with her...only before two year she had opportunity to talk wither parents.

she completed her 5th Standard in her village school...for the first time she came to Delhi so she forgotten about her detail address , she was not able to express her proper address so always she used to say her employer that she want to go her home but employer was saying no when phillip will come she will go to her family with her only.

27.07.2015

To
The Chairperson
Committee on Domestic Workers
Government of NCT of Delhi
New Delhi-110054

Subject: Action points regulating domestic workers' conditions of service.

Rationale for regulation under labour law framework

The Indian Constitution (DPS) confers to its citizens, men and women equally, the right to an adequate means to livelihood. Article 41 stresses that "the state, shall within the limits of its economic capacity and development, make effective provision for securing right to work".

Millions of workers in the urban capitals of India sustain their livelihood by engaging as domestic workers. Domestic work is recognized as a form of employment, that is "work performed in or for a household or households within an employment relationship" (Domestic Workers Convention, 2011 (No. 189)). Globally, a large number of countries have taken steps to enact legislations to bring domestic workers in the scope of their labour legislations.

Domestic work has increased significantly in last decade in India. Given the increasing significance of this occupation in absorbing vulnerable and marginalized communities, and the increase in demand especially from urban households, important legislative developments have taken place. For example, domestic work is **explicitly recognized in two central legislations**, the **Unorganized Workers Social Security Act, 2008**, **Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013**. Furthermore, at State levels, **Minimum Wages is being extended** (11 States[1] have taken some action), and **Welfare Boards** established in three States (TN, MH, Kerala).

Explicit inclusion of domestic workers, even in very limited number of labour laws, reaffirms that domestic work is a legitimate labour market activity undertaken in employment relationships. Unlike other occupations in the unorganized sector such as self-employment, domestic work is done in an employment relationship. This means there is scope to view their service conditions within an employment relations / industrial relations framework. However, due to conceptual and definitional issues in relevant legislations (such as Industrial Dispute Act, the Factories Act, Shop and Establishment Act), only establishments, mines, and factories can be treated as workplaces, and workers hired therein as workers. Hence, although conducted in an employment relationship, domestic work lies outside the coverage of labour laws that **regulate conditions of service** and grant access to **effective grievance redressal through labour courts**. This non-inclusion has created a sector that is unregulated, with working hours that are excessively long (particularly for live-in domestic workers), arbitrary payment arrangements, no weekly leaves and other forms of paid leave, and moreover no recourse to justice in the event of exploitative practices.

Employers also suffer as a result of the informality. There may be frequent absences, or workers quitting without notice, limited information on obligations as employers of domestic workers, lack of skilled workers, lack of professionalism and even theft and crime caused by workers.

These employee-employer tensions are caused by lack of governance, and there is a clear and urgent need to regulate this sector and establish a fair terms of employment, including protection by minimum wages, stipulated work hours, sufficient rest period, social protection, work in safe and violence free environment, obligation for professional conduct, and access to justice in ways that takes account of the privacy of the household.

Gaps in labour laws and need for specific law

An analysis of labour legislations in India (annex 1) shows the extent of coverage in existing legislation and gaps, followed by suggested reforms required to include domestic workers under existing legislation. The analysis shows that extensive reforms would be required in the definitions and scope of most laws which may not be feasible.

Hence, only a specific law can meet the requirements of regulating this sector. There have been several attempts to introduce a specific law on domestic workers, which illustrates the policy importance that has accompanied the rights of domestic workers. The first attempt was The Domestic Workers (Conditions of Employment) Bill, 1959. The most recent was The Domestic Workers (Conditions of Service) Bill, 2009, a Private Member's Bill introduced in Parliament by Shri Arjun Ram Meghwal. There are other Bills such as that developed by the National Commission for Women in 2008, and by the Domestic Workers Rights Campaign in 2010. This is a grave lacuna, especially in the light of Articles 41 and 43A of the Constitution of India.

In view of the existing gaps in ensuring labour rights and regulation of working conditions of domestic workers, this note reiterates that only a specific Legislation can establish and regulate employment and conditions of service/ working conditions. A specific legislation shall be comprehensive, covering the following non negotiable elements:

1. **Establish that domestic workers are able to enjoy all those labour rights that are available to other workers generally, including and not limited to regulation of employment, conditions of service/ working conditions, social protection, and effective access to justice.** This includes

- 1.1. Freedom of association and right to collective bargaining;
- 1.2. Elimination of all forms of forced / bonded labour/ child labour;
- 1.3. Elimination of discrimination and protection against all forms of abuse, harassment and violence;
- 1.4. Right to have a written terms and condition of employment;
- 1.5. Right to fair wages not less than the prescribed minimum wages expressed in terms of hourly, daily and monthly wages;
- 1.6. Right to stipulated and fixed working time in a day, that takes into account normal hours of work, standby or on-call hours, overtime compensation, periods of daily and weekly rest, and paid annual leave and sick leave;
- 1.7. Availability of safe and healthy living condition that offers sufficient privacy, and sufficient, appropriate and nutritious food in the case of live in workers;
- 1.8. Opportunity to avail skills development and professional growth;
- 1.9. Right to a safe and healthy working conditions;
- 1.10. Right to social security benefits including health and sickness benefit, accidental benefit, pension, maternity protection, child care facilities, incentives for children's education, and other benefits and welfare schemes available from the State and Central Governments from time to time.
- 1.11. Right to effective dispute resolution and grievance redressal in a labour rights framework.

2. Establish a statutory mechanism for delivering these rights in the form of a Tripartite Regulatory Authority established under the proposed Act (Delhi Domestic Workers (regulation of employment and conditions of services)).

2.1. The composition of the Tripartite Regulatory Authority and its lower formations must be tripartite in nature and give the pride of place to workers through their elected representatives with proportionate representation for women workers.

2.2. Such a Tripartite Regulatory Authority should be autonomous in order to function effectively like the Employees State Insurance Corporation (ESIC) or Provident Fund Organizations (PFOs). There should be a mechanism for dispute and grievance redressal within the Tripartite Regulatory Authority.

3. The Tripartite Regulatory Authority shall be a quasi-legal authority with powers to investigate and adjudicate matters related to the stipulated provisions mentioned above, and it is mandated to ensure the regulation of employment and conditions of services as stipulated in the Act.

4. The Tripartite Regulatory Authority shall perform the following functions:

- 4.1. Registration of workers and issuing of identity cards
- 4.2. Develop a Model Employment Contract and ensure its implementation;
- 4.3. Monitoring of payment of minimum wages;
- 4.4. Ensuring access to social security provisions, through a mechanism for the collection of contributory social security funds [from Central/State funds, workers and employers contributions and through fees collected from recruitment/placement agencies and cess on property tax].
- 4.5. These social security provisions shall include, but not limited to:
 - 4.5.1. providing immediate assistance to a beneficiary in case of accident;
 - 4.5.2. making payment of pension to the beneficiaries after reaching the stipulated age as specified by the Authority;

- 4.5.3. sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;
- 4.5.4. pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;
- 4.5.5. give such financial assistance for the education and skills development of children of the beneficiaries as may be prescribed; meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed;
- 4.5.6. make payment of maternity benefit to the female beneficiaries;
- 4.5.7. provide death and disability allowance, funeral support and make provision and improvement of such other welfare measures and facilities as may be prescribed.

Where ever better provisions exist under the central or state laws/schemes/policies, the Authority should adopt the latter.

4.6. Establish and manage a help line in the Tripartite Regulatory Authority and form General Local Complaints Committee to deal with grievances and dispute resolution on all labour matters, and ensure linkage with other concerned statutory bodies such as the Local Complaints Committees established under the Sexual Harassment of Women at Workplace Act (Prevention, Prohibition and Redressal) Act, 2013, Child Welfare Committee, Delhi Commission of Women, State Commission for Protection of Child Rights and so on.

5. Register and regulate any establishment recruiting and placing domestic workers (Recruitment/Placement Agencies): This would entail that the agencies supply records to the Tripartite Regulatory Authority with names, addresses and photographs of the domestic workers and pay fees (per person placed by the agency) accordingly. They should specify what services they provide to the worker and the employer, especially if the workers are migrants. The employers shall pay the wages directly to the domestic workers (through bank accounts/or record of receipt of payment) and such agencies shall be barred from collecting wages of the domestic workers from employers.

6. Facilitate opportunities for skill development and upgradation by providing linkages to skill development programs for domestic workers under different government and non-government programs.

7. There should be a portable smart card for the workers that is recognized all over the country so that they can avail benefits in a seamless manner in place of work and native residence, without losing entitlements (for example on migration/return to state of origin). This also provides portability of social security if the worker has worked in another state.

8. There must be provision in the law for the State governments to set up as many schemes as necessary from time to time, based on the participatory consultations with domestic workers organizations/unions.

9. The Tripartite Regulatory Authority should also be financed through a contribution from the Central and State Government collected from the revenue, until a proportionate amount is set aside for social security of domestic workers from the allocation towards social security of the unorganized workers (proposed as 3% of the GDP as suggested by the Standing Committee on Labour). Furthermore, 1% of the house tax collected by the local bodies should also be added to the fund of this Tripartite Regulatory Authority.