Domestic work, a predominantly female occupation, has been increasing in India. Growing urbanization, the increased labour force participation rate of women, and the decline of extended families are the primary reasons for the exponential growth of this sector. Despite this growth, there are few (if any) laws and policies to regulate domestic work and protect domestic workers. In recent years, efforts have been made at the state and central levels to legislate for these workers and several draft legislations are currently under discussion by organisations of domestic workers.

Most domestic workers are from the marginalized sections of society and a large number of them are migrant workers. Workers range from full-time to part-time workers, skilled and unskilled workers. Largely women, who already know how to clean and cook, domestic workers are seen as requiring very little skill training. Besides, the work is seen as allowing women, who also shoulder the responsibility of their own households, some degree of flexibility. ‘This fact reinforces sexual division of labour within the world of work and of race, caste, class, poorer economies apart from gender as well.’ In 2000, the UN Human Rights Commission declared domestic worker as a form of contemporary slavery.

Organising domestic workers has been a huge challenge as the workplace is inaccessible and multiple, marked by a high rate of attrition and instability. As a result, the demand for the better wages or working conditions through an organized union has been weak and scattered. A strong and well organized work force has been pivotal in ensuring progressive policy and legislation, while simultaneously enabling better enforcement of existing legislations.

Legislating for Domestic Workers in India

Domestic workers are not protected under the scope of labour laws in India. Early judgements had declared that that those engaged in personal service could not be considered ‘workmen’ for the purpose of the Trade Unions Act, 1926. This is also the position with regard to most other labour laws since the household or home is not considered an ‘industry’ to which the labour laws could apply. As a result, domestic workers are currently not covered within the scope of most labour legislation. They are not entitled to maternity or other social security benefits, and their working conditions or

---

1 Sujata Gothoskar, New initiatives in organizing strategy in the informal economy -- Case study of domestic workers’ organizing-- Executive summary (available at : www.wiego.org/publications/Gothoskar%20New%20initiatives%20in%20organizing%20strategy%20in%20the%20informal)
2 Rangaswami v. Registrar of Trade Unions AIR 1962 Mad. 231.
3 See decision of the Supreme Court in Bangalore Water Supply & Sewerage Board v. Rajappa AIR 1978 SC 548.
hours of work are not regulated. In certain states, minimum wages have been notified for domestic work.

Several attempts have been made to legislate for this challenging sector. A Domestic Workers (Conditions of Service) Bill (a private members’ bill introduced in the Rajya Sabha – the upper House of the Indian Parliament) was drafted as early as 1959 but was never enacted. This bill together with All India Domestic Servants Bill, introduced in the Lok Sabha – the Lower House of the Indian Parliament – provided for a minimum wage, maximum hours of work, a weekly day of rest, 15 days annual leave with wages, casual leave, and the maintenance of a register of domestic workers by the local police. In 1972 and 1977 two further private member bills [Domestic Workers (Conditions of Service) Bill, 1972 and the Domestic Workers (Conditions of Service) Bill, 1977] were introduced in the Lok Sabha, which provided for the Industrial Disputes Act, 1947 to be extended to domestic workers. These bills lapsed with the dissolution of the Lok Sabha.

The House Workers (Conditions of Service) Bill of 1989 and a similar bill introduced in 1990 were also not enacted. Both of these bills dealt mainly with full-time domestic work. An important aspect of the 1990 bill was that it envisaged that every employer would have to contribute to the House Workers’ Welfare Fund. The National Commission on Self-Employed Women and Women in the Informal Sector, 1988 recommended a system of registration for domestic workers. The Commission felt that in view of the existing trends of exploitation, it was extremely important to fix a minimum wage, and to enact a legislation to regulate conditions of employment, social security and security of employment.

The National Commission for Women has drafted a Domestic Workers (Registration, Social Security and Welfare) Act, 2008 and has held consultations around this bill. This bill is a comprehensive bill that seeks to establish a registration procedure for all domestic workers, including part-time and full-time workers. The bill also proposes the setting up of a Domestic Workers Welfare Fund to which workers and employers have to contribute, for compulsory registration of domestic workers, and also deal with registration of service providers (defined as placement agencies for domestic workers), regulation of working conditions and for imprisonment and fines by way of punishment for violation of the provisions of the bill. Central and state level boards are to be set up for administering the law.

The Nirmala Niketan and National Campaign Committee for Unorganised Sector Workers has also drafted the Domestic Workers (Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill, 2008 which is also subject to discussion. This draft law seeks to regulate the employment of domestic workers to ensure regularity of employment, payment of contribution by employers and domestic workers, setting up a Social Security and Welfare Board and central and state level boards to administer the law. This draft also envisages enforcement by the government through a system of

---

5 *Ibid*.
inspections at reasonable hours of domestic premises. These recent bills are discussed at greater length below.

Given the federal nature of the Indian Constitution and that legislative entries relating to labour are to be found in the Concurrent List, there have also been, at the state level, several initiatives towards ensuring protection for the domestic workers. Tamil Nadu included domestic workers in their Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982, in 2007 and the Tamil Nadu Domestic Workers Welfare Board was constituted in the same year. Maharashtra published a Code of Conduct relating to domestic workers.

Most of the draft laws discussed above prohibit employment of children below the age of 14 years as domestic workers. The Child Labour (Prohibition and Regulation) Act, 1986 was amended in 2006 to ban the employment of children as domestic workers. Under Section 27 (A) of the Maharashtra State Public Service Conduct Act, 1997 the Maharashtra government prohibits government employees from employing children below 14 as domestic workers. Such rules can also be found in the rule books of 18 other states. The All India (Conduct) Rules, 1968 have also been amended to prohibit any government employee from employing a child below the age of 14 years.

The states of Kerala and Karnataka have adopted minimum wage laws for domestic workers. In June 2005, the state of Karnataka introduced, by a notification, ‘domestic work’ into the schedule contained in the Minimum Wages Act. According to the notification, a domestic worker who works for eight hours in a house is entitled to an amount between 1,600 and 1,800 rupees per month. But if the members of the household where the work is done are more than four, the charges will go up to 2,200 rupees. If she/he works more than eight hours, they have to be paid double the rate.

In 2003, the National Domestic Workers’ Welfare Trust and other organizations filed a public interest litigation (PIL) in the Supreme Court for a comprehensive legislation for domestic workers in India, that has been admitted. The PIL challenged the inadequate social and legal protection and demanded better working conditions like mandatory national holidays and two weeks of paid leave, in addition to a weekly day off for domestic workers. It also sought medical assistance for accidents caused ‘on-site’ and during employment, maternity benefits, provident fund benefits and the identity cards to the workers. The petition also sought a ban on child domestic work and sexual harassment faced of domestic workers.

Key issues in legislating for Domestic Workers

Definition - The definition of the ‘domestic worker’ needs greater clarity. The domestic worker is defined as a person employed to do the housework or allied activities in any household, thus excluding those involved in cleaning or cooking in offices, shops and other such premises. Many workers are engaged by small shops and establishments for similar work. Workers who are employed in cleaning and more particularly, catering

---

jobs in an establishment are covered by the Contract Labour (Regulation and Abolition) Act, 1970. Additionally, the Shops and Establishments Act can also be invoked to protect workers engaged in shops and similar such establishments.

Thus, whether a comprehensive law to cover all categories of domestic work is desirable or whether there needs to be a separate law for domestic workers engaged in household work and whether those involved in cleaning/cooking/catering in establishments should continue be treated as workers under existing labour laws, needs further explication within the domestic workers movement.

**Wages** – Wages for the domestic workers are determined by factors such as tasks performed, hours of work, their social status, skills (or the lack of it), the need for flexibility and other labour market conditions. There are on-going debates over the norms for setting wages. These debates include several tricky issues such as whether the wage ought to be time rated or piece rated, in kind, hourly or weekly, part-time or full time; based on house size or persons per household, over time; adjusted for boarding, include medical care and other necessities and multiplicity of employers. Another concern that has been expressed is the need to link the wages to dearness allowance, which will ensure that the minimum wages do not fall lower than the cost of living for this very poor category of largely female workers. Several issues in wage setting relate to the live-in domestic workers, such as the regulation of agencies, leave periods (including annual, sick and maternity leave), hours of work, ‘on call’ periods/ rest periods.

**Sexual Harassment** - Female domestic workers, especially those who live in their employer’s home, are vulnerable to sexual abuse. The existing sexual harassment law following the Vishaka judgement of the Supreme Court does not apply to domestic work. There is thus a need for the proposed law to provide a mechanism for dealing with such harassment. Migrant domestic workers are especially vulnerable to sexual assault. A separate law, or a component of a domestic violence law, is needed to control trafficking of women and workplace sexual harassment.

**Discrimination** – Domestic workers invariably represent the more marginalized communities in society. Prejudice and bias related to social status is reflected very strongly at the workplace for many domestic workers. A clear statement in the law prohibiting discrimination on the basis of caste, class, gender, sexuality and/or religion is necessary. Another insidious but widely prevalent bias is that of poverty and criminality, which has wider ramifications as domestic workers are the first to be questioned on the occurrence of a crime. Greater protection needs to be accorded to domestic workers against police harassment and discrimination.

**Trafficking and Migrant Labour** – Both inter and intra-country migration brings with it certain vulnerability for workers within the sector. Lacking support systems in a new city, many have low bargaining power and the ability to protect their basic rights. The situation of foreign domestic migrants is even worse than that of domestic migrants as they are generally un-documented and they are regularly harassed by the police and the authorities.

---

9 See the proposed calculation on the basis of piece-rated wages by the Stree Jagruti Samiti, Bengaluru.
**Regulation of Agencies** – Agencies that seek to procure and place domestic work proliferate in several parts of the country. Time and again allegations of harassment, rape, corruption, and adoption rackets, are levelled against these agencies. Regulation of these agencies is of prime importance and this must necessarily be tied in with education of citizens employing domestic workers through agencies.

**Freedom of Association** - While the nature of the work renders it difficult to organize the domestic workers, particularly those that work full-time in households, the other challenge is to register a union under the Trade Union Act, 1926. There is a need for this law to be amended to clarify that domestic workers are deemed to be working in an ‘industry’ and are thus within the scope of the law. Issues for organizing domestic workers in several parts of the world have focused on union issues; formation of co-operatives; credit and savings groups. Vocational training; social activities; employment exchanges; support services; a place to congregate; crèche; legal and general advice; support in disputes with employers and in familial disputes. The law must take of cue from these efforts to rethink organizing as necessary to the effective implementation of any legislation for domestic workers.

**Ensuring Effective Implementation** – Reconceptualising the legal framework so as to enable effective implementation is imperative. Experience in both Karnataka and Maharashtra states suggest it is difficult to implement even the minimal protections accorded by the law. Time and again, the labour department has expressed its inability to monitor the implementation. Providing a role to unions of domestic workers or women’s organisations in enforcing the law and in registering complaints of non-compliance is essential. Re-envisioning and recasting the labour regulation framework so to be able to address the protection of domestic workers is crucial.

**Recent Efforts at Legislating for Domestic Worker:**

The National Commission for Women (NCW) has proposed the Domestic Workers (Registration Social Security and Welfare) Act, 2008. It claims to put in place a Comprehensive Central Legislation designed to register and meet the working conditions of the domestic workers, who are an important segment of the service sector of the Indian economy. Simultaneously, the National Campaign Committee for Unorganised Workers and Nirmala Niketan has also proposed a Domestic Workers (Regulation of Employment), Conditions of Work, Social Security and Welfare) Bill, 2008 (NCCUW).

**Definition of a ‘domestic worker’**

Section 2 (f) of the NCW Bill 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 basis or permanent, part-time or full-time to do the household work or allied work. The section provides an explanation stating that a

---

‘household and 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, caring/nursing of the children/sick/old/handicapped. The definition does not extend to workers who do similar work in office spaces and in other establishments. It also does not specifically exclude child labour employed in domestic work.

Whereas the definition of ‘domestic worker’ in the NCCUW draft states that a ‘person between the age of 15 and 60 years working in any domestic employments, directly or through any agency or contractor whether exclusively for one employer or in a group or otherwise one or more employers whether simultaneously or otherwise and includes –

- a casual or temporary domestic worker;
- migrant worker.

But does not include any member of the family of an employer’.

Schedule I to the NCCUW bill indicates that domestic work will include gardening, baby sitting, cooking and serving, cleaning and washing and care of the sick and aged.

Section 2 (h) of the NCW Bill states that ‘employer’ means any person that engages the domestic worker to do any work in a household whether part-time or full-time either directly or through any other person to whom the affairs of such household and includes any other person to whom the affairs of such household is entrusted, whether such person is called an employee or is called by any other name.

The NCCUW draft provides a similar definition of an employer and defines ‘employer’ as any person ‘who has an ultimate control over the affairs of the establishment, work or service and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an employee or is called by any other name prevailing in the scheduled group of employments’.

But the NCCUW draft provides an additional definition, that of an ‘establishment’. Section 2 (j) states that an ‘establishment’ means any place or premises belonging to, or under the control of an employer where the domestic workers are employed in any work; and includes an establishment belonging to the employer. (According to Section 2 (9) of the Delhi Shops and Establishments Act, 1954, an ‘Establishment’ means a shop, a commercial establishment, residential hotel, restaurant, eating house, theatre or other places of public amusement or entertainment to which this Act applies and includes such other establishments as Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act.) It appears that while the definition of establishments could be read broadly to include shops and commercial establishments, the NCCUW draft intends to confine the bill only to those engaged in domestic work and working within a house and the definition of establishment should be read down accordingly.

Wages
Both Section 2 (m) NCW and Section 2 (u) NCCUW draft defines ‘wages’ as all ‘remunerations expressed in terms of money or capable of being so expressed which would, if the terms of contract of employment, express or implied were fulfilled, be payable to a domestic worker in respect of work done but does not include—

(i) the value of any house accommodation, supply of light, water, medical attendance, or any other amenity or any service excluded from the computation of wages by general or special order of the government;

(ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme or social insurance and the interest which may have accrued thereon;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the domestic worker to defray special expenses entailed on him by the nature of his employment.’

Section 2 (u) provides an additional clause – (v) which states ‘any gratuity payable on discharge.’

The South African legislation approaches the question of ‘wages’ differently. The legislation enumerates the hourly rates, weekly rate and the monthly rate payable and the amounts are prefixed in the statute. Section 3 links the wage increases to the Consumer Price Index. It states: “If the annual increase in the Consumer Price Index reported by Statistics South Africa six weeks before a wage increase in terms of this clause comes into effect is 10% or higher, domestic workers will be entitled to receive a wage increase in the Consumer Price Index.” The NCCUW draft acknowledges the importance of setting the criteria for determining the minimum wages in the Statute. Section 8 (ix) states that the appropriate government shall ensure to every domestic worker ‘the right to minimum wages in accordance with norms evolved at the 15th Session of Indian Labour Conference, 1957 and Reptakos Brett judgement.’

**Calculating wages**

In a study put together by Stree Jagruti, an organization based in Bengaluru in 2005, on minimum wages for domestic workers. The report proposes a few guidelines for fixing the minimum wages for domestic workers. The recommendations are reproduced here, as much thought has been given to the specificities of domestic work as a category.

“Minimum Wage Law Proposal

*We propose the following Guidelines:*

• **Domestic Workers involved in Sweeping, Swabbing, Cleaning Clothes, Cleaning Vessels, Dusting and other unspecified items should be paid a minimum of 151 (Basic) + 99 (VDA) = 300 Rupees per month for an hour’s work per day, regardless of the activity or the number of tasks;**

• **Domestic Work involving cooking and preparing food should be paid 350 Rupees per**

---

11 For details see South Africa’s Basic Conditions of Employment Act, No 75 of 1997 available at www.labourguide.co.za.
month for an hour’s work per day;
• Any part-hour or multiple of hours should be calculated pro-rate against the appropriate rate, above;
• Domestic Workers should be given a weekly day off. If this is not given, overtime should be paid: the resulting monthly rates should be 400 Rupees and 475, respectively. This is based on an overtime rate of double the standard rate and 4.5 overtime days per month;
• These rates should be altered each year in line with inflation.

Under these terms, our example of a two-hour, three-task employment with no time off would be paid 400 * 2 = 800 Rupees.”

Similarly, the Alternative Law Forum, Bengaluru has recommended the following method for calculating wages: a prescribed minimum wages + 1 to 5% of the household income + 10% annual increment + overtime for time worked beyond agreed period of work or duration of work + additional wage for additional work.

Modes of delivery of welfare benefits

The NCCUW draft bill conceives of Domestic Workers Boards to be set up in each State, with a larger mandate of regulating employment and conditions of service. The employers of domestic workers shall make contributions to the social security and welfare funds of the Domestic Workers Boards. Every registered worker is also required to make a small contribution to the fund. Thus, the welfare fund is seen as a subset of the Worker Boards. Additionally, the NCCUW seeks to regulate the agencies that procure and place domestic workers (especially migrant workers) across the country.

Similarly, the NCW bill seeks to set up a Domestic Workers Welfare Fund. Section 15 states that the fund shall be administered and applied by the State Board. And every member registered as a beneficiary under the Act shall be entitled to the benefits from the welfare fund. Contributions to the fund include grants made by the Central Government, money received by beneficiaries, amounts received by district boards, income from investment amounts in the fund, fines and contributions from the domestic worker. The District and State Boards shall be responsible for registration and monitoring of domestic workers. All agencies that carry on the business of providing domestic workers are required to be registered under the Act. The NCCUW bill envisages that every employer shall pay a yearly contribution into the fund for every full-time or part-time domestic worker employed, with the contribution for a part-time domestic worker on the part of an employer being lower. This bill also provides for the compulsory registration of domestic workers and places a duty upon the employer, service provider (placement agency) or domestic worker to register with the appropriate board.

Examples of best practices from other sectors would be useful in designing welfare structures for the domestic workers sector. Informal workers such as head-load workers, construction workers, etc have been successful in enacting progressive legislations such as the Maharashtra Mathadi, Hamal and Other Manual Workers
(Regulation of Employment and Welfare) Act, 1969 and the Tamil Nadu Manual Workers Act in Tamil Nadu. In Tamil Nadu, the Domestic workers have already been added to the schedule to the Act, and a separate welfare scheme has been notified for them.

**Implementation**

The NCCUW bill visualizes a three tier implementation mechanism. A District Board accountable to a State Board, which in turn is answerable to a Central Advisory Committee. Thus, at the lowest level, the District Board shall be the contact point for the domestic worker. The NCW Bill sets up a Domestic Workers Board at the State level. Additionally, it sets up a Central Advisory Committee, State Advisory Committee and Inspectors to implement the provisions of the Act. Interestingly, it grants powers of inspection to any registered trade union. Section 15 states that any registered trade union may have the power to inspect work premises and prosecute the erring employer for violations under this Act.

The NCCUW bill provides for a system of inspection at reasonable hours within the household premises to ensure compliance with the provisions of the law. The idea of the home being a private domain has been one of the reasons for the labour law not extending to the home. However, over the years there has been a great erosion of the public/private distinction for the purposes of the law. Domestic violence, cruelty and other forms of sexual abuse carried on within a home are subject to legal regulation. There appears to be no good reason why labour–related provisions should not be enforced within the home.

Any proposed law for domestic workers has to grapple with these key issues identified above.

**Conclusion**

New efforts at legislating or regulating the domestic work sector have generated greater debate and a more careful study of the sector. The ILO initiative to have a discussion on Decent Work for Domestic Workers in 2010 at the International Labour Conference with the possibility of adopting a Convention or Recommendation on the subject, provides an opportunity for organizations of domestic workers and their supporters in India, who have been lobbying for a law, to step up their campaign. This will trigger a more intense debate both within government and the movement for domestic workers. A concerted effort at enabling a comprehensive legislation for domestic workers is crucial to protect workers in this sector.