

Domestic Workers' Laws and Legal Issues in India

November 2014

WIEGO LAW & INFORMALITY PROJECT



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Women in Informal Employment: Globalizing and Organizing is a global network focused on securing livelihoods for the working poor, especially women, in the informal economy. We believe all workers should have equal economic opportunities and rights. WIEGO creates change by building capacity among informal worker organizations, expanding the knowledge base about the informal economy and influencing local, national and international policies.

WIEGO's Law & Informality project analyzes how informal workers' demands for rights and protections can be transformed into law.

The **Self-Employed Women's Association (SEWA)** is an Indian trade union of poor self-employed women workers. SEWA's main goal is to organize women workers for full employment. Full employment means employment whereby workers obtain work security, income security, food security and social security (at least health care, child care and shelter). SEWA organizes women to ensure that every family obtains full employment.

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1. Domestic Workers in India and the Law

Domestic workers come from vulnerable communities and backward areas. The majority are poor, illiterate, unskilled and do not understand the urban labour market. Their work is undervalued, underpaid and poorly regulated. Lack of decent wages, work conditions and defined work time, violence, abuse, sexual harassment at workplace, victimization at the hands of traffickers/ placement agencies, forced migration, lack of welfare measures and lack of skill development avenues resulting in stagnation are major issues that they face.

There is as of yet no data on the exact number of domestic workers in India. The estimates vary from 4,75 million (NSS 2005) to over 90 million according to different sources. While the former is a gross under-estimation, the latter may be exaggerated. However, it can be safely estimated that they number over 50 million in the country.

Some steps have been taken by the Government of India in recent years to provide legal protection and social security to domestic workers. As mentioned above, they have been included in The Unorganized Workers' Social Security Act (2008) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013). There have been other measures as well, like extension of the Rashtriya Swasthya Bima Yojana (RSBY) to cover domestic workers and the notification of Minimum Wages by a few State governments.

The employment of minors as domestic workers is still a common practice in India despite the inclusion of this occupation in the list of hazardous child labour (2006) by the Government of India (GOI), prohibiting it for boys and girls under the age of eighteen. The Juvenile Justice Act, 2000, has been effective to some extent in the rescue of workers below the age of eighteen. However, the Child Labour Act has included domestic work in prohibited employment for children only up to age fourteen. Therefore, children above age fourteen are legally allowed to work under certain conditions and do not fall under the jurisdiction of the Juvenile Justice Act. Given the large numbers and the enormity of the problems that this sector of workers face, these steps remain grossly inadequate.

After Independence, the Government passed more than 40 central Labour Legislations. Nevertheless, these legislations have benefited only the workers of the organized sector, when in actual fact 93 per cent of labour fall into the unorganized sector.

2. Lacuna in Existing Labour Legislation to Meet Needs of this Sector

An analysis of labour legislations in India shows that domestic workers are not included in the scope of several labour laws because of constraints in the definitions of the “workman”, “employer” or “establishment”. The nature of their work, the specificity of the employee-employer relationship and the workplace being the private household instead of a public place or private establishment, excludes their coverage from the existing laws. Even the placement agencies escape from the ambit of labour laws, because of such definitional issues. To include domestic workers under these laws, definitions will have to be amended. Laws that need such amendments include 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; Employee’s State Insurance Act, 1948; Employees Provident Fund Act, 1952; and the Payment of Gratuity Act, 1972. Only an integrated law can regulate the placement agencies and the conditions of domestic work and provide social security to them. Mere extension of the Shops & Establishments Act, to register the placement agencies as has been done in Delhi and which is proposed nationally, is not a real solution.

Only a central law can meet the requirements of regulating this sector since the workers also frequently cross inter-state boundaries. That they are also caught in the trap of agents who supply them to placement agencies or even harass or traffic them for other forms of forced labour is also a reality. The nearest law in the statute book, namely the Inter-State Migrant Workers Act, has proved hopelessly inadequate to counter this situation.

According to the National Human Rights Commission (2002-2003), 90 per cent of trafficking in India is internal. The non-availability of jobs in rural or tribal areas, such as Jharkhand, facilitates the continuous supply of women workers to Delhi and other cities. India is also a source and transit route for trafficking women and girls to the Middle East for domestic work (D’Souza, 2010) from our neighbouring countries. Within this process of migration there are risks, particularly because of deceptive recruitment practices or abuses at the hands of workers’ employers.

In 2011, SEWA conducted a study for the ILO to understand the problems of migrant labour in domestic work and to assesses the nature and extent of abuse with a view to ascertaining whether these workers have been victims of forced labour or trafficking for labour exploitation as defined in the ILO Forced Labour Convention 1930 (No.29) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).

The study revealed that the majority of migrant domestic workers to the Arab States and some of the internal migrants from Jharkhand are victims of trafficking and forced labour according to the international definitions of these crimes.

Although the GOI has developed an Integrated National Plan of Action against Trafficking and is taking steps to put some remedial measures in place in the form of Integrated Anti-Trafficking Units and Anti-Trafficking nodal cells, there is a need for a more comprehensive legislation on labour trafficking. At the same time, the law regulating interstate migration, the Inter-State Migrant Workmen Act of 1979, would also require major amendments.

Trafficking is a widely prevalent practice and is understood differently in different contexts. The protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, supplementing the United Nations (UN) Convention on Transnational Organized Crime, known as the Palermo Protocol, defines trafficking in persons as:

“... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

On the basis of this definition, operational indicators of trafficking in human beings have been developed by the ILO and the European Commission. These indicators, which were completed in 2009 on the basis of a survey of experts, provide a means to distinguish between those that successfully migrate, exploited migrants and victims of trafficking for forced labour (where an element of coercion is present).

The ILO Forced Labour Convention, 1930 (No. 29), defines forced or compulsory labour as “all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself [or herself] voluntarily.” Moreover, Article 3 (d) of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and Art 3 (g) of its accompanying Recommendation No. 190, categorizes as hazardous “work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.”

The recent ILO Convention No. 189 calls for Decent Work for Domestic Workers. Article 3 of it specifically states that “each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers... and take the

measures set out in the Convention to respect, promote and realize the fundamental principles and rights at work". Hence, institutional mechanisms to safeguard the rights of these workers have to be put in place. Understanding the existing problems of migrant domestic workers will certainly help evolve a system that is both practical and effective.

India has addressed trafficking both directly and indirectly in its Constitution. There are three Articles among the Fundamental Rights in Part III and Directive Principles of State Policy in part IV that address trafficking-related issues. Article 23 of the Fundamental Rights prohibits trafficking in human beings and all forms of forced labour.

The following are two non-justiciable Directives of State Policy:

- Article 29 (e) ensures that the health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength.
- Article 29 (f) states that childhood and youth should be protected against exploitation.

In 2006, the GOI declared domestic work as hazardous for children thus prohibiting those less than eighteen years of age to be employed as domestics.

Domestic law in India recently incorporated a definition of trafficking in line with the Palermo Protocol in the CLA (2013). However, the term "forced labour" was noticeably excluded from this law. Instead, the CLA uses the term "practices similar to slavery." It is unknown if the courts will interpret "practices similar to slavery" as encompassing trafficking for labour exploitation. If not, the new amendment would continue to leave workers vulnerable and without full protection from all types of exploitation. This gap is not addressed by other legislation relating to trafficking. The Immoral Traffic Prevention Act, 1956 (ITPA), is restricted to sex trafficking. The Indian Penal Code, 1860, stipulates punishment for a number of offences not specifically dealt with in the ITPA. There is as yet no central law on organized crime, although India ratified the UN Convention on Transnational Organized Crime, 2000, and its accompanying Protocol on Trafficking in Persons in May 2011.

3. Need for Comprehensive Legislation

It is under these circumstances that a National Platform, developed by a coalition of trade unions to demand comprehensive legislation, seeks the help of the Government. The task does not involve any substantial fund allocation since the solution lies in regulating recruitment and conditions at work in a sector where the rendering of services and the systems of remuneration is in the private realm. Presently, the private working space cannot be hidden from public gaze. It must become an open transparent space where recruitment and conditions of work are appropriately regulated by the law of the land. For this there is need of a special sectoral law along the lines of other sectoral laws such as the Dock Workers (Regulation of Employment) Act, 1948; Beedi and Cigar Workers (Conditions of Employment) Act, 1966; The Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969; and The Building and Other Construction Workers (RE&CS) Act, 1996.

The useful guidelines from the ILO, as contained in the ILO Convention on Decent Work for Domestic Workers (Convention 189) to enact legislation to protect this sector, has already been created. What is required now is the political will to enact a comprehensive law to safeguard the rights of this sector and the provision of just social security.

3.1 History of Demands

Since The Domestic Workers (Conditions of Employment) Bill, 1959, there have been many attempts to legislate for this sector, but without success. 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 the one developed by the National Commission for Women in 2008, and one by the Domestic Workers Rights Campaign in 2010, but there is no Act of the Parliament to protect the rights and welfare of the largest as well as the fastest growing sector of employment for women in the urban areas. This is a grave lacuna, especially in light of the ILO Convention 189, and Articles 41 and 43 A of the Constitution of India.

Now again, several unions in the country have created a National Platform for Domestic Workers in order to demand Comprehensive Legislation for domestic workers. This should contain the following non-negotiable conditions:

- a. The Law should regulate employment, conditions of work and provide social protection simultaneously: This includes fixation of wages and other conditions of work, resolution of disputes and protection of employment besides provision of social security, childcare facilities, housing, training and skill formation.

- b. A Tripartite Board should be the instrument for implementation of the Act. The composition of the Board 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. Such a Board should be autonomous in order to function effectively like the ESI or Provident Funds. There should be a mechanism for dispute and grievance redressal within the Board.
- c. The Board should undertake:
 - Registration of workers and their social security contributions
 - Regulation of conditions of work
 - Social protection
 - Registration of employers and collection of their contribution for social security
 - Monitoring of Payment of minimum wages
 - There should be a help line in the Board and also a complaints committee at all levels to handle the sexual harassment complaints of domestic workers.
- d. It is the responsibility of the Board to register the Placement Agencies: This would entail the agencies supplying records to the Board with the names, addresses and photographs of the domestic workers on their roles and paying fees accordingly. This is especially important if the workers are from the outside the country or state.
- e. Domestic workers should be encouraged to organize their own collectives or cooperatives. However, when they formally register their group with the Board, they should not be treated like labour/ manpower supply agencies.
- f. The Board should provide skill up-gradation training for domestic workers.
- g. There should be a smart card for the workers that is recognized all over the country so that they get their benefits when they retire wherever they are. This also provides portability of social security if the worker or employer has worked in another state.
- h. While the Central Act will provide a model format and rules, there must be provision in the law for the State governments so that they can set up as many schemes as necessary in each state. As conditions of work vary in each region, appropriate suggestions may be taken from the local domestic workers' representatives.

As the Standing Committee for Labour has suggested that 3 per cent of the GDP be earmarked for the social security of unorganized workers, a proportionate amount should be set aside for the security of the domestic workers. One per cent of the house tax collected by the local bodies should also be added to the fund of this particular Welfare Board.

4. Efforts Initiated under the National Platform for Domestic Workers

The National Platform for Domestic Workers (NPDW) was created in 2012 and comprises several domestic workers unions and member-based organizations from around the country that are demanding Comprehensive Legislation for Domestic Workers. Since then there has been a country-wide, coordinated effort to, first of all, demand that the GOI ratifies the ILO Convention 189 Decent Work for Domestic Workers, which was passed in June 2011. There have been signature campaigns all over the country as worker organizations attempt to sensitize their local MPs to the issues of this very marginalized and vulnerable section of workers. Their hope is that this issue would be raised in Parliament.

Earlier in 2010 and into 2011, the Ministry for Labour created a task force and developed a draft National Policy for Domestic Workers. This was the time when the ILO was involving governments in the workup to the International Labour Conference that would take up the discussion on a Convention for Domestic Workers. The position of MOLE was that since this is a sensitive area where very little data exists, the GOI should move gradually and therefore a Policy would gain more headway than legislation. MOLE was of the opinion that providing some welfare and minimum social security would meet the needs of these workers. The worker representatives on the Task Force – SEWA and the National Domestic Workers Movement – emphasized the fact that such minimal welfare was not sufficient. MOLE wanted the work of these workers to be regulated and therefore there was a need to register the workers, the employers and the placement agencies. Furthermore, the workers should be receiving their due social security. Hence, the Draft Policy that MOLE made public on its website in November 2011 was a very comprehensive Policy.

At this time, the National Advisory Council also created a Working Group, and further looked into the matter. Subsequently, MOLE presented the Policy but it was then held up by the parliamentary Standing Committee and has still not seen the light of the day. In the meanwhile, the GOI included the domestic workers in its RSBY (Health Insurance Scheme) and some states implemented it. When the Sexual Harassment at the Workplace Bill was being discussed in 2012, domestic workers were specifically not covered by this Bill. Hence members of the Platform campaigned for inclusion and this was finally achieved.

On 31 July 2013, the National Platform conducted a Public Meeting at Jantar Mantar where over 3,000 workers from all over the country gathered. They had brought with them the thousands of signatures they had collected from their local areas demanding Comprehensive Legislation for Domestic Workers. The signatures were taken to the President of India, following which various MPs took them to Parliament. Unfortunately, the government at that time was facing many other political challenges

and the business of Parliament was constantly being disrupted. The result was that this issue was not taken up by Parliament. Subsequently, the government was voted out. We also came to understand from MOLE that the National Policy had undergone substantial changes and, despite several requests, a copy is not yet available to the public. Hence, we fear that this is a very watered down Policy, and as a Platform we do not intend to urge its notification.