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Domestic Workers

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Introduction:

In December of 2013, a middle ranking Indian woman diplomat in the US stood accused of grossly underpaying her (Indian) migrant domestic worker. In the furore that ensued, the spotlight conveniently shifted away from the violation of the worker's rights to diplomatic propriety. ¹

In September 2015, two Nepali domestic workers alleged rape and torture by a Saudi Arabian diplomat residing at Delhi; the diplomat later left the country, using diplomatic immunity to protect himself from prosecution.²

In July 2017, mob violence erupted after allegations that a migrant domestic worker from the minority community had been kept captive by her employers in a luxury gated housing complex at NOIDA. A month later, the police filed a closure report on the domestic worker's complaint citing 'lack of evidence', but 13 persons accused of 'stone pelting' continued to languish in jail for several months thereafter without bail. ³

Such incidents immediately spawn a large number of stories ⁴ about the gross exploitation and abuse of paid domestic workers in different parts of the India, but rarely do we find any

¹ www.rediff.com, 'This is not the case of one Sangeeta alone', December 21, 2013

² www.firstpost.com "Saudi Diplomat booked for Rape". September 10, 2015

³ FE Online "Mahagun Moderne Society Row", August 10, 2017

⁴ See for example www.newslaundry.com/2017/07/28/domestic-workers-in-india-is-a-class-war-impending or www.thehindu.com/opinion/op-ed/its-not-help-its-work/article19273135.

examples where the domestic workers have received any justice, except with the support of a trade union or any other social organization. Although the class, caste and gender biases inherent in India's criminal justice system are justifiably to blame for such a sorry state of affairs, it is our contention that physical and mental abuse of domestic workers continues unabated in our country primarily due to lack of any special protective legislation that can be invoked to prevent their exploitation and provide them with security.

This paper reviews the situation of domestic workers in India at the current juncture, arguing for comprehensive protective legislation that will give them a clear identity and rights as workers. However, successive political regimes have failed in terms of policy prescriptions for domestic workers. This is partly due to their class character, and also because large swathes of domestic workers across the country continue to be unorganized. It is clear that domestic workers can achieve their rights only through a planned intensification of their struggles and the building of a political identity that can influence policy makers.

Paid Domestic Work in India: A Sector of Significance

Non familial domestic work has a long history in India (for an excellent review, see Mattila, 2011). Unlike in Europe, where the "domestic service system" that existed in the nineteenth century gradually disappeared at the beginning of the twentieth century (Lutz, 2011) domestic services in India have been rooted in a "culture of servitude" that originates in feudal society but permeates modern Indian households (Ray and Qayum 2009).

Over the last two decades, paid domestic work and domestic workers have generated a lot of interest for a number of reasons. Although there may not be any agreement on the actual numbers of paid domestic workers in India (see below), there is no disagreement about the fact that this sector now accounts for a significant portion of women's employment, particularly in urban India. It has been estimated on the basis of NSSO data that there was an increase of 150% in the number of domestic workers between 1999-2000 and 2009-10 (Chandrashekhara and Ghosh, 2012), making it one of the most "dynamic" sectors for overall employment in the country (Ghosh, 2013). 14.4 % of the total increase in women workers during this decade came from the paid domestic work sector (Chandrashekhara and Ghosh, 2012).

It is true that earlier while women performed unpaid household work within the home, men dominated the paid domestic work segment, especially in the “live in” section of domestic workers (Raghuram, 2001). However, over the years there has been an increasing tilt towards a feminisation of the sector. The proportion of women in paid domestic work in urban India increased from 58% to 67% between 1981 and 1991 (Majumdar and Swaminathan, 2003); The NSSO data shows that there has been a further feminisation, recording 71% of women in this sector in 2004-5. (Neetha N., 2009)). 75% of the total increase in domestic workers between 99-1000 and 2009-10 consisted of women (Chandrashekhar and Ghosh, 2012). While the number of men in the sector is still significant, this may also be due to some of the issues pertaining to how domestic work is defined and estimated in our country.

This increase in number of female domestic workers also has to be seen in the context of declining workforce participation rates for women in India as revealed by the 66th Round of the NSSO. This data shows a further decline of FWPRs to 20% (usual principal status) and 26% (usual principal and subsidiary status) in rural areas and 12% (usual status) and 14% (usual principal and subsidiary status) in urban areas (Mazumdar and Neetha, 2011.) Juxtaposing this decline with the massive increase in the number of paid female domestic workers leads us to believe that the latter is a response to the employment squeeze for women. As a result, many women are seeking work in the paid domestic work sector for want of any other source of employment (Chandrashekhar and Ghosh, 2012).

Of course, there is also the rising demand for paid domestic work that comes from several sources. With the patriarchal division of labour within the family remaining intact, as more and more women from middle and lower middle class families take on employment, they need to shift their double burden on to someone else (Moghe, 2006). This is typically the domestic worker, especially when the dependence on the joint family for support is declining (Bhattacharya, *et al*, 2016). It has been pointed out that in India, employing a domestic worker is actually an extension of the previous feudal practice of employing servants (Mattila, 2011). Moreover, unlike in many developed countries, where the demand for paid domestic work declined for some period of time, in India, it reflects an aspiration to a middle class status (Ray and Qayum 2009) or a lifestyle symbol (Jagori, 2010).

Commensurate with the increase in the number of paid domestic workers has been an interest in organising them, either by trade unions, or women’s organisations or NGOs. The struggles

launched by domestic workers in several parts of the country have brought media visibility to their situation, and the need to improve it. Based on their experiences of organisation and advocacy, these organisations have also made a significant contribution to the debate on the domestic work segment in India.

There is thus a growing body of literature and a plethora of micro-studies on the situation of domestic workers in contemporary India, that have made a rich contribution to our understanding of their situation and problems. The complex intersection of class, gender, and in the Indian context, caste, creates an intricate matrix of economic and social relationships that have been studied by different scholars, albeit from different perspectives. Domestic workers evoke and invite interest because they are 'workers', 'migrants', 'women', 'care givers', 'members of the informal sector', 'stigmatized', 'victims of violence', 'political agents', 'citizens', 'examples of complex human relationships', so on and so forth. The literature includes combinations of primary and secondary statistical surveys, structured interviews, anecdotal evidence, ethnographic accounts, and even autobiographical accounts and novels. They thus involve different types of methodologies. Here we examine some of the major debates and discussions that have ensued during this decade in India, with a view to inform policy prescriptions for paid domestic workers in India.

Understanding Paid Domestic Work in India:

Domestic work is part of the larger category of care work, which has been broadly defined as "looking after the physical, psychological, emotional and developmental needs of one or more other people."⁵ As pointed out by some scholars, care is not just physical activity but includes an emotional component that cannot be quantified (Lutz, 2011). A more detailed description which sums up the nature and character of care work is as follows:

*"Caring work includes taking care of children, the elderly, the sick, and the disabled, as well as doing domestic work such as cleaning and cooking. As reproductive labour, care work is necessary to the continuation of every society. Care is not simply a natural and uncomplicated response to those in need, but actually hard physical, mental, and emotional work, which is often unequally distributed through society."*⁶

⁵ <http://www.ilo.org/DecentWorkandtheCareEconomy>

⁶ <https://workfamily.sas.upenn.edu/glossary/c/carework-definitions>

The modern 'care economy' therefore consists of a variety of services that are part of care work, including health, education, child care, and services for the elderly, as well as different activities that are part of housework. Care work can either be self provisioned (unpaid) or obtained through the market (paid). While women traditionally bear the burden of unpaid care work within the household, it is also a fact that women are predominantly present in marketised "care" occupations such as domestic services, nursing, teaching, social care and especially child-care. It is the gendered nature of care work that results in its overall devaluation, both as labour and in monetary terms. When the work is carried out by poor migrants, or as in India, by women from the lower rungs of the caste order, it is further devalued (Jagori, 2010).

Thus three aspects of care work - that it is *work*, that its burden is *disproportionately borne by women*, and that it is *undervalued* - have a bearing on our understanding of paid domestic work.

To distinguish between paid domestic work and unpaid household work we need to take recourse to some defining principles such as a job description, an employment relationship, and the workplace. Thus the ILO describes paid domestic work as "work performed in or for a household or households" and a "*domestic worker* means any person engaged in domestic work within an employment relationship" (ILO, 2016).

While there is no dispute about the workplace of domestic workers being the private space, and the existence of an employment relationship, there is still some confusion about which occupations and what tasks and activities constitute paid domestic work. This is reflected in two divergent views in policy documents pertaining to domestic workers in India.

For example, the Final Report of the Task Force on Domestic Workers (MOLE, 2011) does not actually define the term 'domestic work'. Instead it defines "Domestic worker as a person who is employed for remuneration whether in cash or kind, in any household work, but does not include any member of the family of an employer".

On the other hand, the National Policy For Domestic Workers In India (MOLE, 2015) states that "Domestic or household work" means all such work involved in management of private

living home(s) including but not limited to activities assigned to servants, maids, cooks, waiters, valets, butlers, bell-boys/girls, care-givers for sick, old or disabled, laundresses, gardeners, gate-keepers, security guards, stable-lads, chauffeurs, caretakers, governesses, babysitters, sweepers, cleaners, car-washers, drivers and such other home management responsibilities including shopping for food and undertaking other household errands.”

The differences in definition are more pertinent than may appear at first sight. The above omnibus definition that defines domestic work in terms of occupational categories works with the underlying assumption that the categories themselves describe the tasks. However, it has been pointed out that defining particular tasks is important because it helps domestic workers in their negotiations with employers to reach agreement on the tasks and activities for which they are employed and to enforce limits to what can be asked of them as part of their jobs (Barbagallo and Federici, 2012).

The question of whether it is work *in* or *for* the household is also critical because of the gendered nature of work *in* the household that not only results in a devaluation of paid domestic work, but also ignores its critical (emotional) care element. It has been pointed out that the low rates prescribed for paid domestic work while fixing minimum wages reflect the low value assigned to unpaid household labour of women (Sankaran, 2013). On the other hand several services rendered *for* the household such as driving, security guards or caretakers, laundry services etc. are largely male dominated occupations that not only fetch comparatively better wages but can also come in the ambit of the labour law framework. Thus it is important to use a definition of paid domestic work that takes into account these complexities so as to ensure effective policy prescriptions.

Estimating the Numbers of Paid Domestic Workers in India:

The definitional aspects discussed in the above section also affect the estimation of the numbers of paid domestic workers in the country. A major debate is whether it should be based on occupation or industry workers (WIEGO). The ILO’s International Standard Classification of Occupations (ISCO) recognises domestic work under two broad classification groupings (groupings 5 and 9) and identifies associated tasks as follows: 5121 – Housekeepers and related workers; 5131 – Child care workers; 5133 – Home-based personal care workers; 9139 – Domestic helpers and cleaners. While Classification 5 addresses commercial

establishments, institutions and private households, Classification 913 covers “private households, hotels, offices, hospitals and other establishments (Neetha, 2009). The obvious problem is the inability to separate out the private households for the purpose of estimating domestic workers.

The ILO argues that an industry based approach is more suitable than identifying domestic workers on the basis of their occupations, since some occupations (cooks, gardeners, and security personnel) can also be performed in non-household locations. Therefore, the basic characteristic of domestic workers, of being in an employment relationship with a private household should be the basis for estimating their numbers. Another advantage is that a disaggregation of the data at the one or two-digit level is generally sufficient to identify domestic workers in published data from labour force or other household surveys. Its drawback is that it undercounts the workers employed by a service agency (ILO, 2013).

In the same report, the ILO has pointed out the huge discrepancy in the estimation of domestic workers in India, ranging from 2.5 million to 90 million (ILO, 2013). It surmises that such large figures are probably quoted by organizations advocating the rights of domestic workers. By applying the industry based approach to the 61st Round of the Unemployment and Employment Survey (2004-5). The ILO uses Division 95 “Activities of private households as employers of domestic staff” of the International Standard Industrial Classification (ISIC) to arrive at global estimates of domestic workers. Using a corresponding category of “Private households with employed persons” (Category 95) in India’s National Industrial Classification (NIC 1998) the ILO has arrived at a figure of 4.2 million domestic workers in 2004-5. However, it has been pointed out that categories such as gardeners and watchmen are male oriented occupations, and therefore the number of female domestic workers is around 2.5 million (Neetha, 2009)

It has also been pointed out the sub categorisation of ‘housemaid/servant’ and ‘others’ are over arching categories that do not specify the tasks undertaken by these workers. They do not reveal whether there is really any exclusivity when it comes to categories such as ‘cook’ or ‘baby sitter’, because of the multiplicity of tasks which is a hall mark of both paid and unpaid domestic work (Neetha, 2009).

The National Classification of Occupations has three categories, viz. Housekeepers, Matrons and Stewards (Domestic and Institutional), (ii) Cooks, Waiters, Bartenders and Related

Workers (Domestic and Institutional); (iii) Maids and Related Housekeeping Service Workers. The 2005 data estimates a total of 4.3 million workers of which 3.6 million are in the category of maids and related housekeeping services, and 90.8% of them are women. Although the institutional inclusion results in higher numbers, they are also prone to undercounting.

Subsequent to the ILO Report, data for the 66th Round of the National Sample Surveys on Employment – Unemployment during was published. It has prompted some further comparative analysis of the 55th, 61st and 66th Rounds, i.e. 1999 – 2000, 2004 – 05 and 2009-10 respectively. It has been pointed out that the 66th Round used the NIC-2004 (as against NIC-70) which has significantly affected the identification of people in particular categories. Similarly, the 66th Round used NCO-2004 with different digit codes that have resulted in loss of occupational details. This has also affected comparability of data with earlier rounds.

It has been pointed out (Raveendran, 2011) that Industrial Classification 95 rules out the inclusion of those who work in multiple households, a very important characteristic of contemporary paid domestic workers in India. Further, in many cases, the data records the specific work performed as an industrial category when he or she may actually be doing it as part of paid domestic work (tutors as teachers, or chauffeurs as passenger transport). Thus the lack of consistency between industry classification and occupational classification is likely to lead to under estimation of domestic workers. It has been suggested that since Industry code 950 is equivalent to Enterprise Code 8 (employers' households), all informal sector workers in different occupational categories that report the place of work as the employer's dwelling unit should also be included in the estimation of domestic workers. It has also been recommended that there should be greater consistency between industrial and occupational classifications for better estimation especially of informal sector workers such as domestic workers.

A recent report prepared by the NSDC (KPMG, undated) states that the estimated number of domestic workers in the country was about 6 million in 2013, and is expected to grow to 10.88 million by 2022. However it does not mention any specific methodology used to arrive at these figures and quotes 'NGOs' as its source.

Estimating the number of domestic workers in the country is not simply a matter of methodological quibbling, to arrive at the correct number. It reveals the difficulties in counting a set of workers that have hitherto received little attention in labour statistics,

because they have not been considered workers, or their labour has not been considered a productive service. The data is simply not able to reflect the complexities of domestic work. The discussion around the rights of domestic workers has rarely pointed out the need to improve methodologies of data collection that will present a true picture of the sector. The importance of numbers is not to be underestimated; they are critical for making proper budgetary and financial estimates related to the demands for social security and other benefit programs for domestic workers. In the absence of proper numbers, policy makers cannot formulate concrete schemes. In India too, those advocating the rights of domestic workers need to approach the survey agencies for greater accuracy and consistency of data sets on domestic workers.

Working Conditions

Several studies about domestic workers in different parts of India conducted over the years have thrown light on their working conditions. Remarkably, the studies indicate that their situation remains largely unchanged, drawing attention to the need for urgent action at the policy level to ameliorate their conditions.

Working Hours and Nomenclature

There has been extensive discussion on the nomenclature to be adopted for classifying types of domestic workers. There is now a broad consensus that the term 'part time' for those domestic workers who have multiple employers and do different tasks in each household is a misnomer, because many of them actually work for a greater number of hours than what is considered a 'full' day's work. However in the absence of any legally stipulated number of hours of work per day or per week for domestic workers, even those who are resident with the employer could also work for very long hours.

Thus the preferred nomenclature is now based on the place of residence of the domestic worker, and the terms "Live Out" and "Live In" are now used to classify them. Some "Live Out" workers may work for a single employer, for a long working day, while others may work for a few hours with multiple employers. "Live In" workers could be living in the household of the employer, or in accommodation provided to them.

Much of the growth in the number of paid domestic workers has been in the 'Live Out' category due to different reasons. One major cause is the growing limitations of space in large metropolitan cities (such as Mumbai and Delhi) that precludes the possibility of having a resident domestic worker. Secondly, some employers prefer to hire help for particular tasks (including for caste considerations, for example, for cooking), and the live outs provide them with this flexibility. This is also advantageous for employers in cost terms. Thirdly, many domestic workers are residents of low income settlements near their employers' residences. This allows for mutually convenient timings and hours of work such that many domestic workers can combine their own household care work with paid work. However it has been pointed out that some "Live Outs" work virtually free in lieu of the accommodation provided to them by employers, especially those who are government or defense employees (Jagori, 2010, ILO-IHD, 2017). However, this particular section is also prone to instability due to changing employers, life cycle events such as marriage or childbirth, or change of location due to displacement, rented accommodation, etc. (Neetha, 2009).

On the other hand "Live in" workers are prone to working without rest, and even proper food and living space. They may not be paid on time, and are prone to verbal and sexual abuse. Many are migrants at the mercy of unscrupulous and unregulated agents which increases their vulnerability.

Leave

Most of the studies report that neither category of workers has any weekly off or paid holidays. Any absence that is negotiated is mostly without pay. In some cases it has to be compensated by extra work at a later date (Bhattacharya, *et al*, 2016).

Absence without leave or extension of absence with leave can result in loss of employment. Leave is one of the most contested aspects of the employer-employee relationship and absenteeism is related to high turnover of domestic workers (Sen and Sengupta, 2016). One study noted that 4% of workers were dismissed because they remained absent for more than 4 days in a month (GIPE, 2015).

Tasks:

Domestic work covers a wide range of tasks. While they are usually classified in terms of cleaning, cooking and child and elderly care, there is in fact a multitude of tasks associated

with these broad categories. However, since most work is negotiated on an oral basis, the absence of any detailed listing of tasks allows for the employer to expand the list and a further extraction of labour (for example pet care, garbage disposal, marketing, etc).

Most surveys indicate a hierarchy of tasks, with cleaning (floors, utensils, clothes, etc) work considered as menial and lowly while cooking and care work assume a better status. Historically, while the unclean tasks were done by the so called lower caste women, there is strong evidence across the country that caste barriers are being broken in paid domestic work. Here migration is seen to play a major role, permitting women to be employed in paid domestic work at their place of migration without reference to their caste and social status at their place of origin (Mazumdar and Neetha, 2010).

Wages:

The hierarchy is also reflected in wages, with cooking fetching the highest rate of wages, followed by elderly and child care and the lowest rates for menial cleaning work. However, some tasks are related to the size of the house (such as cleaning floors, etc) while others depend on the numbers in the household (cooking, cleaning utensils, washing clothes, etc). Some tasks are also more arduous or time consuming than others. All these factors complicate the process of wage fixation.

In the absence of any formal arrangements, wage fixation is highly arbitrary. Since the domestic workers are in a vulnerable position, the process of wage fixation is highly subjective and biased in favour of employers. Workers are inclined to accept lower wages for fear of loss of employment.

The practice of undercutting due to high competition also leads to a downward pressure on wages (Sen and Sengupta, 2016). The perception that this is “unskilled” work also contributes to low wage rates (AIDWA, 2014). Due to this perception, unlike other occupations, experience in domestic work does not necessarily lead to higher wages (Sen and Sengupta, 2016). Wages also differ according to locations (AIDWA, 2014), and the paying capacity of the employers (Bhattacharya, *et al*, 2016).

There is hardly any practice of paying additional wages for extra work (for example at the time of festivals, guests, etc.). There are no fixed rules about when wages should be paid, and delays can seriously disrupt the dynamics of the domestic worker’s household. One study

(Jagori, 2010) noted that domestic workers were not paid if their employers were absent for 2-3 months.

There is no practice of regular increments, which could at least offset inflation and maintain real wages. A lengthy relationship with the employer can reduce the bargaining capacity of the worker, and it is reported that workers are more likely to get an increase in wages if they join new employment (Sen and Sengupta, 2016).

These complexities that arise due to the informal nature of the employment relationship and the inherently complicated nature of domestic work are further intensified because the personalized care element of the work is not taken into account while fixing wages.

Study	Location	Year of Survey	Average Wage (Rs)
ISST	Delhi	2008	1874
Jagori	Delhi	2008-09	2194
UNRISD	Rohtak	2008-09	1130
TISS	Mumbai	2009-10	1964
AIDWA	Delhi	2014	2877

Study	Location	Year of Survey	Average Hourly Wage (Rs)
SWS	Kolkata	2007-9	5 - 6
ISST	Delhi	2008	13
CWM	Chennai	2014	18 -33
AIDWA	Delhi	2014	16

Notes: ISST survey quoted in AIDWA, 2014

The above tables have been constructed from some of the different surveys available. Although they are methodologically diverse, the field level data clearly indicates the lack of standardization in wages both within a city as well as across the country. Average wages do not appear to have increased much over time. A study of employers in Mumbai and Delhi reports huge variations in terms of locations, employers and tasks, (ILO-IHD, 2017). A recent report states that the average monthly income of domestic workers is less than Rs 1000 in Tier 2, 3 and 4 cities, and up to Rs 6000 in metropolitan areas and that barely 2% earn more than Rs 10,000 a month (KPMG, undated). A comparison with other types of casual labour shows that domestic workers are paid 30-40% less than the notified minimum wages for the same location (UNRISD, 2009, AIDWA, 2014). These levels of exploitation make it obvious that

there is an urgent need to notify a minimum standardized hourly wage for domestic workers at the national as well as state level.

Other benefits

The lack of any regulatory framework for domestic workers implies that they have no access to other social benefits such as pensions or insurance. “Bonus” is really in the form of an ex-gratia allowance at the time of festivals. It varies from cash to clothes, boxes of sweets, etc. The amounts depend entirely on the whim of the employer. Many domestic workers have pointed out that this is not really an additional payment and should be seen as compensation for the extra work they have to put in at festival times. No studies have reported any retirement benefits or severance pay being paid after a long tenure with a particular household.

Some studies have reported that employers are a source of interest free consumption loans for domestic workers (Jagori 2010, Bhattacharya *et al*, 2016). Domestic workers are often the recipients of stale food, old clothes and utensils and household appliances, which may be given free or even at a token cost depending on the wishes of the employer.

Socio-Economic Conditions

As with working conditions, the socio-economic conditions of domestic workers appear to be the same across the country.

Caste and Religion:

A majority of studies show that the largest numbers of domestic workers are from scheduled caste (SC) communities (UNRISD 2009, Jagori 2010, AIDWA 2014, GIPE, 2015). While there is a tendency for most of them to be doing cleaning, menial work, it has been noted that caste barriers are breaking down especially in urban areas, and employers are not so particular about the caste of the worker (ILO_IHD, 2017). This could partially be due to a shortage of ‘upper’ caste women entering domestic work (UNRISD 2009).

As one would expect, most studies show that the majority of domestic workers are from the Hindu community. The lower proportion of Muslim domestic workers (compared to their proportion in the population) (UNRISD) could be due to cultural reasons such restrictions on

taking up paid work outside the home. It has also been noted that there is a greater possibility of Muslim domestic workers being hired by employers from the same community (TISS, 2011, ILO-IHD, 2017). On the other hand this is not reported for Christians.

Demographic Profile

Most studies report that the majority of the domestic workers are in the age group 21-50. There is clearly a preference for younger women owing to their greater abilities and perceived efficiency. However, some studies are also reporting a significant proportion of elderly women (Jagori, 2010, AIDWA, 2014); the lack of social security is a major reason why elderly women continue in this occupation. The proportion of child labour has declined (UNRISD, 2009) and is now perhaps negligible (AIDWA, 2014). 80- 90% of domestic workers are married. In the single category, the presence of widows and deserted women who are heads of the household has been noted (UNRISD 2009, Jagori, 2010, Sen and Sengupta, 2016). All studies report extremely low (not more than 50%) levels of literacy.

This demographic profile has a major bearing on policies for domestic workers. The fact that many of them are in the reproductive age group points to the need to provide them with maternity benefit and child care facilities. There is also a need for old age and widow pensions for domestic workers and some kind of severance pay at the end of a minimum period of service in one household.

Migration:

The path-breaking Report on the Status of Women in India mentions an interesting phenomenon about domestic workers. "One odd feature of this groupis that many are wives of sharecroppers whose husbands stay behind in the village." "The normal pattern", the report notes, "is for the family to remain in the village while the man seeks work outside."⁷ Unlike other women migrants who may move for reasons of marriage or family, domestic workers appears a distinct category where economic push and pull factors operate as basic reasons for migration (Sen and Sengupta, 2016).

The emergence of the 'global care chain' whereby many women from developing countries migrate to developed countries in order to do paid domestic work has brought into focus on

⁷ Towards Equality, Report of the Committee on the Status of Women in India, Government of India, December 1974

the relationship between migration and domestic workers. It has also prompted research in order to understand the process by which women become domestic workers and the manner in which their status as migrants affects their working and living conditions. In the Indian context, some studies have discussed the situation of women workers who travel to other countries such as the Gulf and the manner in which the process of immigration itself increases their vulnerability (Gulati, 1997, Kodoth and Varghese, 2012, ILO 2015) while others look at the situation of those who migrate within India (Neetha, 2004, ILO 2015) or from a neighbouring country such as Nepal (CEC 2010).

It appears that an overwhelming number of domestic workers are migrants, both in the live in and live out category (Neetha, 2004, Jagori 2010, ILO 2015a) but their profiles are quite different. Live in workers are invariably younger, and many of them appear to start out as child labour (Neetha, 2004, ILO, 2015a, Sunita Kumari, 2015) and are mostly unmarried, indicating the preference of employers who believe they are “reliable, obedient and efficient in domestic work” (Neetha, 2004, pp1682). Live in workers appear to be better educated. In Delhi, it was found that 88% of the live in workers were Christian and predominantly from the tribal community (Neetha, 2004). However, in the absence of more data from other urban and metropolitan we do not know if this is the pattern all over the country. Their illiteracy and lack of knowledge of the local language make them vulnerable to exploitation by agents. Non-payment or delay in payment of wages, elements of forced/bonded labour, and the possibility of sexual exploitation (by the agents as well as employers) are some of the problems faced by live in migrants. They often face restrictions on mobility and communication with relatives and are generally overworked (ILO, 2015a). The case of Nepali migrants is special because although they do not face any travel restrictions, they often face harassment from the police (CEC 2010).

Live out workers are also predominantly migrants (either interstate or within the state) although they may have migrated two to three decades ago, and are as good as locals in terms of domicile, and local citizenship proofs such as ration cards, Aadhar cards or municipal tax receipts. However, they are still seen as “outsiders” even if they are from the same state.

Studies show that it is the relatively underdeveloped regions in the country (such as tribal pockets of West Bengal, Jharkhand, Chattisgarh and Orissa) or some districts within the state (such as Marathwada in Maharashtra) that are the sending areas for migrants, obviously due

to their poverty and lack of other employment opportunities (Neetha, 2004, Sunita Kumari, 2015).

Women emigrants in paid domestic work also face several problems. They lack basic knowledge about their rights, and what to do in emergencies. The dependency on the employer aggravates the vulnerability of the worker, and their isolation and lack of contact with fellow workers (unlike other categories of emigrants) prevents any efforts to build solidarity and seek help from them (Gulati, 1997). The host country may or may not have protective laws that cover domestic workers. Changes in government policy regarding emigration for domestic work and the rules applicable have also had adverse effects (Kodoth and Varghese, 2012) and may have led to more illegal channels of migration (ILO, 2015).

Living Conditions

Given their low level of wages, most domestic workers live in poor settlements in cities. The disproportionate burden of their unpaid reproductive labour in their own households is exacerbated by lack of water, sanitation and other civic facilities. There are virtually no child care facilities due to which they either leave their children at home alone, or depend on relatives and neighbours, often at great risk to their children (UNRISD, 2009, Jagori 2010).

Housing:

Housing is a critical issue for domestic workers, especially if they are migrants. They most usually live in slums, in semi permanent housing for which they have to pay rents that eat up a substantial portion of their wages (Mazumdar and Neetha 2010). They have to choose between the surveillance and oppressive atmosphere of an employer's household and the insecurity, lack of reasonably priced transport and their cramped and squalid conditions of their often rented accommodations (Sharma, 2016). Since domestic workers often live near their work places, which allows them the flexibility to balance their time for their own household chores (Jagori 2010, Bhattacharya, *et al*, 2016, Sen and Sengupta, 2016), displacement and relocation due to urban development are a major cause of upheaval. But interestingly, domestic workers prefer to commute long distances and return to the same workplaces for reasons of familiarity with employers, their trust and goodwill, and the security offered by the networks built up over years, even though it means greater economic and non economic burdens on them (Sharma, 2016).

Health Conditions

Several studies point to the poor health conditions of domestic workers. Common ailments are backaches, knee problems, allergies due to detergents, and urinary infections due to lack of access to toilets (Jagori, 2010, TISS, 2011). Given the informal arrangements of work, there is no provision for maternity leave or benefit from the employer. Many face loss of wages and employment (Jagori 2010), and also have to return to work soon after their pregnancy leading to complications (Pune Zilla Gharkamgar Sanghatana, unpublished, 2006). Many suffer from general fatigue and poor health, also brought on by lack of nourishment and poor eating habits (Moghe). Mental stress due to constant supervision by employers, or absence from work or financial problems is also common (Bhattacharya, *et al*, 2016). Some also suffer loss of employment due to illness (AIDWA, 2014)

Violence and Discrimination

Most domestic workers are reluctant to admit that they face sexual harassment at their workplaces (Jagori 2010, Bhattacharya, *et al* 2016), and there are few documented cases. Fear of loss of employment is the main reason why it is not openly acknowledged. It appears that domestic workers have evolved different coping strategies to deal with this problem; these

include working in the presence of a female member of household, or sometimes simply changing the job.

However, they frequently face verbal insults and sometimes physical abuse even from their female employers. There is constant haranguing about the quality of work. Accusations of theft are common, leading to loss of face even after the charges have been disproved.

Many studies report the openly discriminatory practices adopted by employers. These include use of different utensils to serve food, bar on using the household's toilet, being made to sit on the floor, given stale food, etc. (Jagori 2010, AIDWA, 2014, Bhattacharya, *et al* 2016). Many workers face domestic violence from their partners (TISS, 2011); alcoholism in family members is common. This adds to their vulnerability and also affects their efficiency at work.

Access to Civic Facilities and Government Benefit Programs:

As one of the poorer sections of workers, domestic workers are often dependant on public facilities for daily needs. The timings of water supply, access and availability of toilets, etc are critical because time is a crucial factor in their work schedule. Many are unable to visit public health facilities because they are open only during the day (Bhattacharya, *et al* 2016). While most of them walk to work, a significant number of domestic workers also use public transport. Commuting is both time consuming and expensive (Jagori, 2010). Many women in large metropolitan cities such as Mumbai and Kolkata commute regularly by local train, facing great hardship (Sen and Sengupta, 2016).

Although many manage to obtain ration cards or identity proofs such as Aadhar or a PAN Card, it is found that few are found eligible to access subsidized food grains on the Public Distribution System (AIDWA, 2014, GIPE, 2015). Many depend on money lenders for meeting expenses for health emergencies, family events such as marriages, deaths, or traveling to their villages (Jagori, 2010). Financial inclusion is likely to have improved after the drive to encourage the opening of Jan Dhan bank accounts in recent years, but there is no information about how many actively use them. Many are members of local thrift and savings groups ('SHGs'), or depend on the private Micro Finance Institutions (MFIs) that have proliferated in recent years.

Organization:

Organising domestic workers is a challenging task, for several reasons. One major reason is that it is difficult to establish contact with them as a group, given their multiple locations and times of work. The fragmented nature of their occupation makes it difficult for them to build any sense of solidarity with each other. The vulnerability of their occupations makes them wary of organising, for fear of loss of employment. The apparent lack of any tangible benefits after collective action also acts as a constraining factor.

Nevertheless, the past three decades have seen the growth of several organizations of domestic workers at the national and state levels. This long history has been ably summarized in Gothoskar, 2005 and ILO-SSST 2016. Forms of organization have varied, with some being registered unions, while others are 'NGOs' that also take up training, placement and welfare activities for domestic workers. As Gothoskar puts it, "One major difference lies in whether the organization works *for* domestic workers or *with* domestic workers (Gothoskar, 2005, pp 72). She argues that in organisations that run on the contributions of domestic workers themselves, the decision making is likely to rest with the workers themselves. This is probably a more sustainable model than those organisations that depend on external funding to work for domestic workers. The Central Trade Unions in India have also now started playing a major role in the organization of domestic workers through their different state units.

Networks of organizations have emerged at the national and state levels to collectively pose common demands of domestic workers (UNRISD-SSST 2016). The major demands have focused on the recognition of domestic work as 'work' and the regulation of working conditions. Minimum wages, paid leave and inclusion in social security programs have been the major demands around which domestic workers are being mobilized by the organizations and platforms. The setting up of a Task Force by the Government of India in 2010 as a build up to the passage of the ILO Convention 189 ("Decent Work for Domestic Workers") and Recommendation 201 at the 100th International Labour Conference in 2011 provided the impetus for renewed efforts to persuade the government to pass protective legislation for domestic workers in India.

Strategies adopted by the organizations include instilling "worker consciousness" and building the identity of a domestic worker through the use of identity cards and uniforms.

Professionalization of the service by improving skills has also been used as a strategy to bargain for collective rights and social protection (George, 2013).

Street protests and regular campaigns have led to a greater visibilisation of the demands of domestic workers, creating greater awareness in employers as well as domestic workers themselves. It has been noted that the very process of collectivizing lends strength to the individual domestic worker's capacity to negotiate with her employer for better wages or a weekly off. It also provides them with a sense of security and a platform for dispute resolution. Some increase in wages and replacement of an arbitrary "gift" by a month's wages as bonus are some of the reported benefits of unionizing (Bhattacharya *et al* 2016). But it is interesting that members perceive the union more in terms of delivering social benefits such as ration cards and educational and health benefits (TISS, 2011, Bhattacharya *et al* 2016) rather than as a means to improve and regulate their working conditions. This may be due to the fact that many organizations are involved in the delivery of these benefits as a tactical move to attract the domestic workers to the unions. However, there are limitations to the welfare schemes in terms of their coverage, eligibility and budgetary provisions as a result of which only a small proportion of workers actually benefit from them (AIDWA, 2014, UNRISD- ISST, 2016). This can create a sense of resentment in those who are excluded. Most importantly, it pushes back the larger issue of recognition as workers and regulation of working conditions. This is a challenge that assumes importance at the current juncture, when labour rights in general are under attack by the ruling governments both at the national and state level in India.

Policy Initiatives

Paid domestic services do not fit into the traditional understanding of productive employment engaged in manufacturing or delivery of different types of services. The location of paid domestic work, i.e. the private household, and the nature of the personal service rendered has meant that it was traditionally excluded from labour legislation. The complexities of paid domestic work has various dimensions and implications - its definition, the methodologies of wage fixation in diverse work situations, exclusion and stigma due to caste and gender, migration (both international and within the country), trafficking for labour purposes, nature of organization, etc., all of which need to be addressed while framing a law or laws for domestic workers.

Either a rigid definition or an inflexible interpretation of terms such as “establishment”, “industry”, worker or “employer” has resulted in the practical exclusion of domestic workers from important laws such as the Workmen’s Compensation Act, 1923, Trade Unions Act, 1926, Industrial Disputes Act, 1947 and the Minimum Wages Act, 1948 (Nimushakavi, 2011). Therefore, a domestic worker cannot approach any labour court for redressing her grievances such as abrupt termination or deduction in wages, etc.

Early Efforts

Private Members Bills that included clauses for minimum wages, maximum hours of work, a weekly day of rest, paid annual and casual leave, etc. for domestic workers were introduced in Parliament in 1959, 1972, 1977, 1989 and 1990. However, it was argued that such legislation would result in loss of employment or would be difficult to enforce) and were either withdrawn or allowed to lapse (Neetha, 2009).

Amendment to CLPRA, 1986

Thereafter the first major legal step towards the recognition of paid domestic work came from a rather unexpected direction. Sparked off by the tragic death of a child domestic worker in Mumbai, the Child Labour (Prohibition and Regulation Act) 1986 was amended in October 2006 such that it classified domestic work as “hazardous” and banned children under 14 from doing paid domestic work. However, as pointed out, there was confusion about the definition, with the terms domestic workers and servants being used without clarifying the difference (Nimushakavi, 2011).

The Shramshakti Report in 1988⁸ took note of the large number of women in this informal sector of the economy and recommended registration as well as minimum wages and social security for domestic workers.

UIWSS Act, 2008

In the meanwhile the report of the National Commission for Enterprises in the Unorganised Sector (NCEUS)⁹ was published, which recommended separate legislation for the regulation

⁸ Shramshakti: Report of the National Commission on Self Employed Women and Women in the Informal Sector, Government of India, New Delhi, 1988

⁹ The Report of the National Commission for Enterprises in the Unorganised Sector, Government of India, New Delhi, 2007

of both conditions of work and provision of social security benefits for unorganised non-agricultural workers. The Unorganised Sector Social Security (UWSS) Act of 2008 that was eventually passed includes domestic workers in the different occupations listed in its Schedule I. The “umbrella” concept of putting all unorganised sector workers in one basket has been contentious, since it does not take into account the different characteristics of various informal occupations.

The major weakness of the Act is that it does not regulate working conditions. Besides it confers no rights, merely stipulating that the state governments should set up Welfare Boards and formulate and implement social security schemes for unorganised sector workers. There is no separate source of funds for these schemes.

State Social Security Boards

However, taking a cue from this, some states like Maharashtra have passed laws to set up a social security board exclusively for domestic workers, while in others such as Karnataka, Chhattisgarh, West Bengal, Assam, Orissa, Gujarat, Kerala, Tripura, Rajasthan, Andhra Pradesh and Andaman & Nicobar social security boards for the unorganised sector as a whole have been instituted (PIB, 2012). Recently the Government of Maharashtra has also set up a general social security board, putting a question mark on the existence of a separate board for domestic workers. The Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982 is an earlier law that regulates terms and conditions of employment of 67 occupations including domestic workers.

Subsequently, previously crafted Central Government welfare schemes such as the, National Old Age Pension Scheme, National Family Benefit Scheme Janani Suraksha Yojana, Aam Aadmi Bima Yojana, Rashtriya Swasthya Bima Yojana and more lately, the Atal Pension Yojana, Pradhan Mantri Jeevan Jyoti Bima Yojana and Pradhan Mantri Suraksha Bima Yojana that are actually available to all citizens who meet their eligibility criteria have been shown to be the schemes being implemented for domestic workers under the Act. There is no data about how many domestic workers in particular have benefited from these schemes (PIB, 2016). Now with the new proposed Labour Codes it is not clear how the status of this Act will be in the future.

Domestic Workers Welfare and Social Security Bill, 2010

At the same time, a process was initiated by the National Commission of Women to draft a bill for the protection of domestic workers. It was prompted by media reports about trafficking of women and children for domestic labour by placement agencies (NCW, 2009-2010). After a series of consultations between 2006-2008 (UNRISD-ISST, 2016) the Domestic Workers Welfare and Social Security Bill 2010 was finalised (NCW, 2009-10). The Draft Bill had a section on regulation of working conditions including provision of minimum wages, a weekly off, working hours, overtime, etc. It proposed the setting up of tripartite boards at the state and district levels with representatives of domestic workers, employers and the government that would ensure the implementation of welfare schemes framed by a central advisory committee in consultation with state boards. There was a provision for regulation of placement agencies, dispute resolution, the compulsory registration of all domestic workers, and the setting up of a contributory welfare fund for the payment of specified benefits. There was also a provision for penalties if the provisions of the Act were contravened. There has been some difference of opinion on the functions of tripartite boards and whether they should replace the regulatory function of the Department of Labour (UNRISD-ISST, 2016).

Towards the ILO Convention

This process of drafting a national legislation appears to have run almost simultaneously and somewhat independent of the process initiated by the ILO in 2008 to set standards for domestic work, with the intention of drafting its Convention on Domestic Work that was to be presented at its International Labour Conference in 2010. A series of consultations were initiated across the country, with the purpose of organising discussions with domestic workers groups. The debates and discussions were similar to the ones that came up at the time of the NCW draft (UNRISD-ISST, 2016).

Task Force

In 2009, impelled by the approaching ILO Convention, the Government of India (UPA-II) set up a Task Force to evolve a policy framework for Domestic Workers. Its terms of reference were to look at both regulatory mechanisms as well as provision of social security, and evolve a Country Paper for the 99th Session of the ILC in June 2010. Subsequently, the Task Force made certain recommendations in its First Report of March 2010, and also extended its own tenure. Its final report was released in September 2011 (MOLE, 2011).

The Task Force initially consisted of representatives of the Ministry of Labour and Employment (MOLE 2011), the Department of Women and Child Welfare, and experts from the ILO and the NLI. Representative of the National Domestic Workers Movement (NWDM) and later of SEWA were subsequently co-opted on to the Task Force. However, other Central Trade Unions found no representation. It is not known whether they were consulted on the draft report of the Task Force, and there is certainly no published record of the Task Force having done so.

First Report of the Task Force:

To start with the Task Force decided to look at the regulatory mechanism in what it termed Phase II and concentrate on the welfare aspects because of what it termed the “need for extensive consultation and interaction over time with different stakeholders” (MOLE, 2011, pp 27).

On the question of welfare measures, it was in favour of “extending welfare benefits through existing, well established schemes and channels” (MOLE, 2011, pp 37).

In particular, it recommended three sets of benefits, viz., health and maternity benefits, death and disability benefits and old age benefits.

However, operationally, the only welfare scheme to be extended to domestic workers in particular has been the Rashtriya Swasthya Bima Yojana, which was notified in June 2011 (MOLE, 2011, Annexure 3). However, the experience on the ground is that despite this notification, since the RSBY was restricted to “Below Poverty Line” beneficiaries, there was confusion regarding whether the scheme was extended to all domestic workers or only those who are also officially in the list of BPL beneficiaries.

However, there were certainly some other important recommendations of the Task Force. One was that all paid domestic workers need to be registered and it whole heartedly recommended that this should be done by the State Labour Departments. It is another matter that most of these departments are heavily understaffed and therefore do not have the basic were withal to undertake this important task. Nevertheless, registration is important because it enables a fair assessment of the actual numbers of domestic workers for whom policies and schemes have to be formulated.

Minimum wages

The Minimum Wages Act of 1948 does not set a national floor wage, and excludes domestic workers in its schedule. A very important recommendation of the Task Force was that state governments should be advised to amend their schedules to include paid domestic work as a category under the Minimum Wages Act of 1948 with priority. In some states such as Karnataka, Andhra Pradesh, Bihar, Rajasthan and Kerala the inclusion pre dates the Task Force Recommendation; others such as Odisha, Jharkhand, Meghalaya, Haryana, Punjab, Dadra and Nagar Haveli and Tripura have included domestic workers in the scheduled list of workers in recent years. It is significant that despite a strong presence of a domestic workers movement, Delhi and Maharashtra are two states that are yet to include domestic workers in their minimum wage schedule.

A study of the process of minimum wage fixation in different states shows how it reflects the gendered devaluation of housework. For one, wages are lower compared to other similar types of work, and there are variations across tasks that reflect the stigma or status associated with it (ILO, 2015b). Despite the fact that it calls for several types of skills, not only is domestic work considered unskilled work, the wage rate is often set at rates lower than other unskilled categories without any plausible reasons (Nimushakavi, 2011, Sankaran, 2013).

It has also been pointed out that these wage rates do not take into account the real complexities of paid domestic work. For example, for live out workers, who do varied tasks for multiple households, a piece rated wage is more appropriate (Sankaran, 2013). On the other hand, the hourly wage rates with an assumed 8 hour day do not take into account the overtime done by live in workers (ILO, 2015b). Nor is there any provision for the incorporation of boarding and lodging as ‘wages in kind’ (Sankaran, 2013).

It has therefore been recommended that domestic work should be defined in terms of its employment relationship while fixing minimum wages. This will not only avoid the gender and caste bias that creeps into deciding the wage for different tasks but will also bring uniformity across states. Given the huge variation in rates across states, it has also recommended notifying a national floor minimum wage rate which should be comparable with other similar types of work, and is adequate to take care of the needs of the worker and her family. The normal working hours should be specifically mentioned as 8 hours, along with

minimum rest periods, a mandatory weekly off and overtime. The lack of consultation with domestic workers and their organisations as well as employers during fixation/revision of minimum wages and sensitization of labour department officials (ILO, 2015b) has also been noted.

The argument that fixation of minimum wages for domestic workers will lead to unemployment is not borne out by studies (Nimushakavi, 2011). One reason could be that minimum wage rates are fixed below market wage rates (ILO, 2015b). However, the other more important reason is a lack of awareness on the part of workers (Nimushakavi, 2011) as well as unions, who do not enter into collective bargaining for wages with employers and prefer to mediate for welfare benefits. Nevertheless, the mere presence of a minimum wage notification provides the space and strength for wage negotiation for individual workers and also bestows domestic workers the status of 'workers' (ILO, 2015b).

Placement Agencies

The third important recommendation of the Task Force was that there should be mandatory registration of all placement agencies under the Shops and Establishments Act, 1953. A directive was issued by the central government in October 2010 (MOLE, 2011), but again there is no state wise record of progress on this account.

The marketisation of care work has led to a huge proliferation of agencies and middlemen who are involved in the sourcing and placing of paid domestic workers. There are a variety of formal and informal arrangements and most of them are commercial enterprises, but some do offer training, hostel facilities, etc. Some organisations representing the interests of domestic workers also double as a placement agency, which has been a point of contention with others who feel it represents a clash of interests (UNRISD-ISST, 2016). Mostly these agencies are profiteering hubs of exploitation of vulnerable migrant domestic workers (Neetha, 2009). The NCW Bill was basically a response to the address the issues of exploitation of live in domestic workers who are also victims of trafficking.

Given that Delhi is a major centre of placement agencies (estimated to be 800-1000 in number as far back as in 2008-9, the Delhi Private Placement Agencies (Regulation) Bill, 2012 was prepared by the Labour Department of the Government of Delhi. It made it mandatory for private agencies providing domestic workers to register themselves with the Commissioner

of Labour, and to maintain records of domestic workers and employers. However it did not clarify the duties of the employer or the rights of the domestic worker. Most importantly, it was pointed out that since most of the domestic workers in Delhi are from other states, a national registration whereby the source areas can also be monitored would be more useful (Mann, 2015). It appears to be in cold storage at the moment.

It has also been suggested that the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979 and the Contract Labour (Regulation and Abolition) Act of 1970 could be tweaked to register and regulate placement agencies (Neetha, 2009), but no concrete steps have been taken so far in that direction. As of now, they continue to function arbitrarily without restraint.

Skill Development

The Task Force recommended upgrading the skills of domestic workers under the National Skill Training Programs, as a means of professionalization of the service and consequent value addition to wages.

In July 2009, a pilot training program was started by the Government of Delhi, the Ministry of Labour and Employment, and the International Labour Organization to train domestic workers with the objective of improving the service along with their employability and working and living conditions (UNRISD-ISST, 2016, KPMG undated). The KPMG report has projected a demand for domestic services in Tier 2, 3 and 4 cities, and therefore recommended a scaling up and replication of this training program in different states. It has also recommended training at the source clusters, and a policy for domestic workers that will establish the rights of domestic workers and enforce a minimum wage. (KPMG, undated)

The thrust on skill development by the current government has permeated into the domestic work sector. In 2015, the Domestic Workers Sector Skill Council was set up with the objective of establishing a national institutional network for skill development of domestic workers in India. It also has an ambitious objective of developing a Labor Market Information System (LMIS) with information on the profile of domestic workers in India, the market demand and the list of organizations working in the sector. It plans to certify more than 25 lakh domestic workers by 2026. However, it appears that it has barely trained 500 persons in the last three years.¹⁰

¹⁰ As reported in a National Stakeholders Meeting facilitated by the ILO on a proposed National Policy for Domestic Workers for the Government of India at New Delhi on the 11th of July, 2017

Code of Practice

The Task Force also recommended “drafting a National Policy for the Domestic Workers covering the welfare, regulatory and skill development issues. The National Policy on Domestic Workers should also include a Code of Practice, which should serve as a guideline for protecting the domestic workers and regulating their work conditions and wages” (MOLE, 2011, pp 34)

We have to take note of this Code of Practice, which finds mention in the minutes of the second meeting of the Task Force as part of Phase 2 which concerns “Regulatory Issues.” Action Point 8 noted that “ILO to prepare first draft of the Code of Conduct document” (MOLE, 2011, pp 41). The minutes of the 4th meeting mention that the Draft National Policy and Code of Practice would be discussed. The First Report of the Task Force has the following paragraph on the Code.

“A Code of Practice” which should be a practical tool to protect the rights of the domestic workers at the workplace should be drafted. The Code should cover a large number of issues that may need to be defined under the category of working conditions, contract of employment, probationary periods, remuneration (wages, payment in kind, regular payment of wages, overtime), implications of employer provided accommodation, regulating living conditions, working time for live-in workers, working time, night work, weekly rest periods, termination of employment and notice periods, etc. The code should be validated by the stakeholders before being implemented.”

Further, it stated. “The Task Force suggested that this code of practice should be treated as a regulatory guideline (emphasis in original) till a separate legal instrument is drafted and /or domestic workers are covered under existing regulatory labour legislations (MOLE, 2011, pp 29).

The Code therefore created a space for the Government to delay the passage (or amendments) of specific laws. The fact that it reappeared in later policy documents (MOLE, 2015, MOLE, 2017) reaffirms the fear held by some organisations that it serves to create a facade of regulation when there is actually none.

National Policy for Domestic Workers, 2011

The Task Force in its final report submitted in September 2011 presented a National Policy for Domestic Workers, with a stated aim to “promote domestic workers’ human rights and fundamental principles and rights at work *by bringing them in the ambit of labour legislations and relevant labour policies and schemes that are available to other workers in India*” (emphasis added) (MOLE, 2011, Annexure 1).

It defined the scope and nature of domestic work and categories the workers into three categories of “Part Time”, “Full Time” and “Live In”. It also defines the terms “Employer” and “Placement Agency”.

Its substantive provisions included:

- Legislative inclusion and designing specific legislative mechanism
- Right to register as workers
- Right to organize
- Right to fair terms of employment, social protection and labour welfare
- Protection of domestic workers who seek work abroad
- Rights to skills development
- Regulation of placement agencies
- Grievance Redressal
- Awareness creation on employers’ obligations

The Policy also recommended setting up an implementation mechanism with the Ministry of Labour and Employment as a nodal coordinating agency. There is also mention of a timeline and budgetary and financial provisions.

The point to be noted is that the 2011 National Policy document is clearly drafted within the framework of labour rights and laws. Most importantly it makes no mention of the Code of Practice/Conduct that had made its way into the First Task Force Report, and there is no such draft code annexed for discussion. However, this entire Final Report of the Task Force which included the National Policy of 2011 remained in cold storage for several years.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment at the Workplace Act that was passed in 2013 did not originally include domestic workers in its ambit. However, after sustained lobbying by women’s and

domestic workers' groups, they have been specifically included in the Act. Apart from the fact that it provides a mechanism to deal with sexual harassment for domestic workers, it recognises the home as a workplace and therefore indirectly reinforces the status of domestic workers as 'workers'.

New Draft National Policy for Domestic Workers in India, 2015:

A new National Policy for Domestic Workers in India was informally made available to trade unions in 2016¹¹. Drafted by the Director General of Labour Welfare in August 2015, it was not clarified if this was to be taken as an official document. Concurrent with it is a 'Code of Standard Practices for Employment of Domestic Workers in India'. The Introduction to the Code mentions that it is the forward linkage to the National Policy that has been brought in *vide* a Cabinet decision of August 2015. One of the aims of the Policy is to translate the ILO Recommendations (presumably the Convention 189) into an 'actionable program'. "The Code ...is intended to be read as an extension to the said policy" (emphasis in original) (MOLE, 2015 pp 5). Thus it is meant to "prescribe the Standard Operating Procedure and Protocols on each and every item of the policy framework for implementing the same in letter and spirit".¹²

The Policy projects a grand scenario whereby, "Five years hence, all three crore domestic workers will cross the poverty line will provide good education to their children to give them a different life" (MOLE, 2015, pp 9) Further, it predicts that live in and full time workers will diminish and "...ultimately piecework or hourly wage system will usher in. The job will be professionalized and high technology will be used by qualified people" (MOLE, 2015, pp 9).

Ignoring this rather romanticized scenario if we make a comparison with the Policy of 2011, it shows some very major departures from the earlier framework.

It prescribes an upper age limit of 60 years for its applicability, and the Code of Practice is even more explicit and defines a domestic worker as "a person between the age of 18 and 60". This goes against the finding that poverty and lack of social security forces most workers in the unorganized sector to work beyond 60. Experience shows that the Maharashtra Domestic

¹¹ A draft that was made available to the CITU has been accessed by the author

¹² Code of Standard Practices for Employment of Domestic Workers in India, circulated with the Draft Policy of 2015

Workers Welfare Act has a similar age limit that has led to the wrongful exclusion of thousands of domestic workers from its purview (Moghe, 2013).

Unlike the earlier broad definition of a domestic worker in the 2011 document, the new policy has descriptive categories of domestic workers are mentioned (such as maids, cooks, waiters, valets, bell-boys and girls, gardeners, security guards, etc, including the abhorrent term “servants”). By stating the categories, those domestic workers who do not fit into these descriptions will be excluded, leaving a space for exemption. More importantly, these categories encroach on other types of workers (for example security guards or those working in the hospitality industry) who can and should be governed by specific legislations.

The definition of ‘workers’ organizations’ has been broadened to include not just trade unions and associations but also cooperative and self help groups. The Ministry of Rural Development and Agriculture is expected to work for registering workers’ organisations that will be accorded recognition by the MOLE. Placement agencies will also be recognized by the MOLE. Thus not only has the role of trade unions been indirectly undermined, they are placed on par with placement agencies.

Further, ‘Workers’ organizations’ are expected to function as the Placement Agency, and will thus be the principal employer; they will be responsible for collecting monthly wages, social security contributions and ensuring that they are credited to the domestic workers’ respective bank accounts. Individual employment of workers who are not a part of an association will be discouraged.

The Code makes the Identity Card a mandatory requirement both for employment and joining or forming a workers association. All workers are expected to register with an organization of their choice.

Workers are to be registered under the Unorganised Workers Social Security Act of 2008 and given a portable smart card (Identity Card) that will enable them to access social security schemes. As per the Code, the worker will be entitled to one life and disability insurance policy (EPF/PMSBY/PMJJBY/AABY), one health insurance policy (RSBY/ESIC) and one old age pension scheme (Atal Pension Yojana/EPF). Maternity benefit, which is of prime importance given the overwhelming majority of women domestic workers is to be “as per

prevailing national policy”, whatever that means. As per the Code, the social security contributions for these schemes are to be recovered from the employer. However there is no mention of what mechanism is to be utilised to deal with errant employers who do not make the payments.

All domestic workers are required to work within the framework of a formal employment relationship through a written tripartite contract/agreement. The Contract shall be enforced through the Indian Contract Act of 1872 and through a grievance redressal mechanism that will employ conciliation and arbitration methods governed by the Arbitration and Conciliation Act, 1996. The District Collector will oversee the functioning of this mechanism. The Code includes a standard contract. The terms and conditions are detailed, including regarding remuneration, methods of payment, weekly rest periods, working hours, different types of leave, accommodation.

All payments made by the employer towards the emoluments of one domestic worker will be eligible for income tax exemption. However the Code does not specify the specific section of the Income Tax Act, 1961. The document includes a model calculation on the basis of a monthly emolument of Rs 10000 per month, with social security benefits at the rate of 12.5% of the monthly wages. The total expenses are shown to be around Rs. 1,70,000 and sought to be offset at a rate of 30% per annum.

The Code also specifies rights of domestic workers, especially the right to equal remuneration for work of equal value, a free and safe working environment, etc. Discrimination on the basis of religion, caste, sex etc is prohibited.

However, along with it is a long list of “duties” of domestic workers, which include some rather vague ones such as “not loitering” or “causing embarrassment or disrepute to the employer within the social settings”.

The Code also has detailed clauses related to skills, termination of employment, protection for migrant workers, regulation and functions of placement agencies, etc.

This Draft Policy of 2015 signalled a move away from the framework of labour legislation. Despite it using the language of rights and including a list of laws that need to be amended to include domestic workers in their ambit, its thrust is on the Code of Practices within the

framework of contractual agreements that will be enforceable within general courts of law. It is difficult to envisage how ordinary poverty-stricken domestic workers, many of whom have little educational qualifications will be able to understand and enforce these contracts. Its restrictive definitions are likely to exclude many domestic workers from its own framework.

More importantly, the core of domestic workers today consists of those who work for a few hours in several households, (defined as “part time” in the draft policy) and it will be virtually impossible for them to enter into multiple contracts with all their employers. The Draft Policy of 2015 thus enhances the bargaining capacity of the employers.

It is not clear who will govern and enforce the provisions of its grievance redressal mechanism. The role of the government appears minimised in the process. The absence of any legally empowered enforcement agency may actually lead to further exploitation of domestic workers.

The role of Trade Unions has been diluted and that of placement agencies has been enhanced. The vital role played by Trade Unions in inculcating a worker consciousness amongst domestic workers will be undermined as they will be viewed more as employment exchanges rather than as rights enforcement organizations.

There is no clarity about how the Welfare Boards set up by some state governments will be dovetailed with this Policy. It is also not clear how state governments which actually implement labour policies have been brought on board in this process.

However, as with the earlier draft of 2011, despite consultations with domestic workers organisations (facilitated by the ILO), nothing emerged in concrete terms. Meanwhile there have been further developments that have led to some confusion about the policy direction of the Government of India.

ESIC Scheme

In August 2016, the Government of India rolled out a pilot scheme for covering domestic workers under the ESIS. It has come in for criticism because for several reasons. For one, it is voluntary and leaves it to the domestic worker to enrol herself for the benefits. Secondly, domestic workers are to get only partial medical benefits; it excludes maternity benefit, an

important provision for a sector which has a majority of women. The scheme is not portable across states. There is no employer contribution and the domestic worker has to pay Rs 200 per month. The age limit for enrolment is 60, which means that several elderly domestic workers will be excluded. Thus the scheme discriminates between domestic and other workers. For the purposes of the scheme, domestic workers are classified as 'self employed', a term that questions the employment relationship that is so critical to the definition of paid domestic services. Since the UNWSS Act of 2008 explicitly states that it will exclude those who benefit from the ESIC Act both need to be amended simultaneously to make them compatible with each other.¹³ .

Domestic workers' organisations have demanded full benefits and employee contribution of 1.75% and employer contribution of 4.75% of the wages paid as per the norms of the scheme that is applicable for all workers.

Draft National Policy for Domestic Workers, 2017

The Government of India has drafted yet another National Policy for Domestic Workers. The document was made available at a Consultation facilitated by the ILO in July 2017 (MOLE, 2017).

This makes it the third draft National Policy document prepared by the Government of India in the last decade. The current Draft suffers from many of weaknesses that were present in the previous drafts.

The policy does not clearly and unambiguously define domestic work as work done *within* the household. By using terms such as "Part Time" and "Full Time" domestic workers, it fails to recognise the fact that the working day of many domestic workers extends to more than 12 hours because they have to work in several households in order to earn an adequate income.

The policy recognises the need to protect overseas migrant domestic workers but ignores interstate migrants within the country.

¹³ Report of the Consultation with Trade unions and Domestic Workers Organizations on Extension of ESIC to Domestic Workers, ILO, 30th^H November 2016, New Delhi

It does not recommend a national floor minimum wage for domestic workers that will encourage State governments to follow suit and include them in their minimum wage schedules. Further it includes a clause that provides legitimacy to the employers to pay wages in kind.

It only mentions the registration of workers, and there is no provision for the registration of employers and their inclusion in the regulatory framework. It talks of a “Code of Practice” applicable to the government, employers, workers, and their organisations rather than a legal framework accountable in courts of law.

There is no clarity about how this policy is to be dovetailed with the Unorganised Sector Workers Social Security Act of 2008. It proposes extension of the social security schemes or inclusion of the Welfare Boards set up in different states without any critical review of their experience so far. Additionally, the design of social security schemes envisaged in the Policy does not make employers’ contributions mandatory.

It talks of model contracts but does not mention the penalties for breach of contracts. The proposed dispute resolution mechanism is vague and includes Resident Welfare Associations, Mohalla Committees, etc. The policy does not clearly address the various discriminatory practices faced by domestic workers, including caste and religious discrimination that is rampant in Indian households.

There is no concrete measure to raise the necessary financial resources for the implementation of the Policy and its social security measures.

There is an Implementation Committee that will produce plans for the implementation of the Policy within 6 months *after* the adoption of the policy. It is supposed to advise the MOLE on the progress of the Policy. Although the Policy talks of workers’ rights, it does not want them asserted. Its whole tone and tenor is conciliatory, with terms such as “amicable settlement of disputes” and “constructive social dialogue”.

Strangely, the MOLE issued a public Notice in October 2018¹⁴ asking for public opinion on a proposed draft national policy for domestic workers. It is not clear why this was done after a draft had already been put for discussion in the July 2017 ILO meeting.

Private Members Bills:

It is interesting to note that as many as 16 Private Member's Bills pertaining to regulating the working conditions of domestic workers have been introduced by MPs cutting across party lines in Parliament in the last six decades (RGICS, 2017). A Private Member's Bill is a tactical move intended to push the ruling government to clarify its stand on the particular point on which the Bill is being placed. As many as five Bills have been introduced after 2014 in this 16th Lok Sabha, of which one is in the Rajya Sabha and 4 in the Lok Sabha. The Domestic Workers (Regulation of Work and Social Security) Bill, 2017 has been introduced in the Lok Sabha and the Rajya Sabha due to the efforts of the National Platform of Domestic Workers (NPDW). However, despite these efforts, the Government of India does not appear to be moving towards any kind of protective legislation for domestic workers.

Labour Codes and Domestic Workers:

This vast and complex debate on the need for a comprehensive law to deal with the working conditions and social security of domestic workers now needs to be situated in the current debate around the Labour Codes that are sought to be introduced by the Government of India at the current juncture.

The Ministry of Labour and Employment of the Government of India has proposed four Codes¹⁵ for wages, industrial relations, social security and occupational safety, health and working conditions that are currently being debated by trade unions.

The Draft Wages Code

The Draft Wages Code that was introduced in the Lok Sabha in August 2017 seeks to replace the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. We need to examine the codes from the point of view of domestic workers who are demanding inclusion in these laws.

¹⁴ Government of India, Ministry of Labour and Employment, Office of Director General of Labour Welfare dated 10 October 2017

¹⁵ Available at the website of the MOLE, <https://labour.gov.in>

In the previous section on minimum wages, we have pointed to the need for an adequate uniform national floor minimum wage for domestic workers. The Draft Wage Code (Section 9(1) of the Bill) states that 'different national minimum wage may be fixed for different states or different geographical areas'. The Code has removed the Schedule of Employment, which lists the industries governed by labour laws. Domestic workers have been demanding inclusion in the schedule to make labour laws applicable to them, but the new Code actually denies them this opportunity. The notion of discrimination in the Equal Remuneration Act has been reduced only to gender discrimination. Thus, it cannot be applied to the wage discrimination that results due to the constructed hierarchy of tasks within paid domestic work. The Code also reduces participation of women in the Central Advisory Board for Minimum Wages from 50% to 33%.

Draft Code on Social Security and Welfare

The Draft Code on Social Security and Welfare deals with the registration of workers and employers and employing entities, the collection of contributions, policy and administrative mechanisms and control and penal provisions. Unfortunately it has only been made available in English on the MOLE website, thus excluding a large majority of workers, including domestic workers, who are likely to be affected by it, from responding to its proposals.

It is an acknowledged fact that India's working population consists of a vast multitude of workers in different employment relationships. However, the Code has failed to appreciate these differences, and has collapsed all workers into one monolithic section. This is particularly detrimental to domestic workers, who require special attention to be paid to their complex work specificities while framing social security programs for them. It also assumes that all workers can negotiate with their employers, without taking into account the particular vulnerabilities of sections such as domestic workers, and that they are in regular remunerative work. It fails to take into account the vagaries associated with informal sector work.

The Code proposes a centralised structure consisting of the National Social Security Council of India with Central and State Boards vested with huge administrative, regulatory and financial powers. The National Council has a provision for only three employee representatives (of which one is to be a woman) in a total of 21 members that are to be nominated by the Government. This is totally inadequate in terms of representing the vast and diverse number of workers in the country. Worse, the Central and State Boards do not even speak of any women representatives of workers. The method of nomination is highly

subjective and undemocratic and trade unions have been sidelined in this process. It fails to acknowledge the fact that the visibility of workers in the informal sector and whatever benefits available to them have been derived due to the efforts of their unions. Given their state of organisation at present it is unlikely that domestic workers will find any representation or voice in this over-centralised structure.

The Code seeks to legalise the discredited and discriminatory two child norm as an eligibility criterion for availing of maternity benefits. It further restricts the eligibility to woman who has “actually worked in an establishment for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery” and thus women including domestic workers who do not have regular work are excluded.

The Code requires every employer, employee and each employer-employee relationship to be registered. There is no provision for self declaration, as a result of which workers in the unorganised sector or informal economy with multiple employers such as domestic workers will find it extremely hard to register for coverage.

Given the need for a huge machinery to implement the Code, there is a provision for the licensing of intermediate agencies (such as fund manager, service delivery agency, benefit disbursement, facilitation, etc). It thus opens the door for privatisation of service delivery and the possibilities of corruption and hardship in accessing welfare benefits. Most importantly, the Code eschews the language of rights and uses the framework of benefits.

Conclusion:

From this extensive review of the situation of domestic workers, their working and living conditions, and the policy initiatives that have been taken in the last decade in India, it appears that domestic workers and their movements are at a critical juncture. On one hand, they have gained visibility and have impelled the government to consider taking some steps to improve their situation. However, the measures that have been taken are far from satisfactory. Apart from producing several policy drafts for discussion, and a few state governments setting up statutory welfare boards and including domestic workers in their minimum wage schedules the basic issue of regulation of working conditions remains unaddressed. The welfare boards have proved to be ineffective in terms of providing substantive welfare measures such as

pension or maternity benefits. There is no machinery to register the workers and renew their registration. The minimum wages notifications remain largely unimplemented. Meanwhile the labour laws in the country are going a structural change due to which their applicability to domestic workers remains doubtful. The government does not appear to be in a mood to implement the ILO Convention 189. The Labour Minister is on record in saying that we have not ratified the Convention *because* the necessary laws are not in place. The implementation of policies of privatisation in critical areas such as health, education and civic services is further affecting them adversely, leading to a decline in their living conditions.

The movement for the rights of domestic workers has gained visibility and some strength, but its striking power remains limited. The movement is further weakened by the growing unemployment amongst women in urban and rural areas that is leading to an oversupply of paid domestic services. While trade unions and organizations working from a rights perspective have urged the government to extend existing labour legislation to domestic workers and tweak it to suit their particular working conditions, the government's approach has been to adopt a 'welfarist' approach. Instead of moving towards regulation of working conditions, especially minimum wages, weekly rest, paid leave and pensions, the government has been trying to bring them under the broad ambit of social security schemes. Despite years of struggle, the lack of substantial gains has resulted in a despondency that is affecting the mobilisation and organisation of domestic workers. The sustainability of the movement depends on its ability to make a breakthrough that will inspire them to build up their struggle for recognition as workers with basic rights. This will require domestic workers to project themselves as a political constituency of importance, in order to push the ruling dispensations to implement policies and laws in their favour.

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