

RIGHT OF DOMESTIC WOMEN LABOURS: GENDER JUSTICE PERSPECTIVE

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ABSTRACT

The gender justice has a long history. It gained momentum with the establishment of the United Nations Organization in 1945. The preamble of United Nations charter declared that “.....*faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights men and women and nations large and small.*” The United Nations had appointed the Commission on the Status of Women in 1946. Its principal duty is to conduct meeting every year and to make recommendations and reports promoting equal rights for women and men in Political, Economic, Civil, Social, and Educational fields. The United Nations in 1972 declared that the year 1975 as “*International Women’s Year*” and also the beginning of the observance of the “*UN decade for women*”. The United Nations had adopted Convention on the Elimination of All forms Discrimination Against Women (CEDAW) in the year 1979. It is described as an international bill of rights for women. The preamble of the CEDAW has categorically prohibited the discrimination against women in all aspect of life. In the above aspect Indian constitution also has provided gender justice provisions and the Constitutional Court plays a vital role for effective implementation of gender justice. The Constitution is supreme law of the land. It has been drafted at the time of adoption of the Universal Declaration of Human Rights (UDHR) in 1948. The basic fundamental human rights set out in the UDHR are respectively reflected in part-III and part-IV of the constitution. It prohibits all form of discrimination and emphasis the gender justice in favour of women through protective discrimination. Even though such non-discriminating provisions contained in the above instruments, the Domestic Women Labours right of gender justice severely violated in various way such as no legislative mechanism to promote welfare, domestic work segmented as non-

skilled and there is no employers' contribution to ensure social security and denial of legislative protection in various laws.

Therefore, this paper analyses the background and context, and role of Supreme Court for the promotion of domestic women labours right (DWL) in India generally and domestic women labours gender justice in national and international level particularly and finally conclusion suggest the various welfare promotion mechanism for ensuring their rights.

INTRODUCTION

“Any society that stifles the potential of more than one half of its population (women) is more than prejudicial and discriminatory. It is foolish and wasteful as well”.

- Charles H.Percy

The half of the world population is represented by women of whom most of them are domestic labours. ILO has estimated that 67 million people engaged in domestic labours and the numbers is steadily growing due to migration to urban areas, unemployment in rural areas due to failure in monsoon thereby failure of cultivation and fall of agriculture, poor, and lack of literacy etc. Further International Labour Organization (ILO) says that 1 in every 25 women are domestic labours in the World. Of these 1 in 3 in Middle East, 1 in 5 in Latin American and Caribbean countries and its Global estimates on Migrant Workers says that 150 million domestic labours are migrants in the World. The domestic women labours are denied decent standard of life in the walk of life and facing ill treatment in hands of employers, not providing fair wages, not fixing proper working hours and holidays and social protection measures and abuse and sexual harassment etc. such maltreatment made by employers because there is lack of coercive legal and enforcement mechanism in national and international level. The domestic women labours are branded as non-skill labours and treated as informal sector labours thereby most of the countries in the World neglected to protect their rights in par with other sectors and formal sector working men thereby violation of gender justice occurs. To rectify to this kind of discrimination, the International Labour Organization (ILO) has brought the Convention Concerning Decent Work for Domestic Workers (C 189), 2011 of which 28 countries has ratified it. The ILO-C189 Convention guaranteed the rights as enumerated in decent standard

of life and non-discrimination the U.N. Charter, UDHR, CEDAW, ICCPR and ICESCR. The provisions of the Indian Constitution ensure decent standard and non-discrimination to all citizens. Further the Parliament has enacted the Protection of Social Security to Informal Sectors Workers Act, 2008. In the above aspects this paper critically studied to definition and context of domestic women labours right in general and domestic women labours right in national and international level and suggest for improving standard of life in the walk of life in particularly.

DEFINITION AND BACKGROUND OF THE STUDY

Domestic Women labours represent a significant share of global workforce in unorganized sectors. The unorganized sector work force means- inform of a typical employment which is not covered under the legal, social or economic protection. They are performing unskilled and non-organised kinds of domestic work in private household such as sweep and clean; wash clothes and dishes; shop and cook; care for children, elderly and disabled. Similarly, the domestic men labours are providing gardening, driving and security services. However the domestic men labours tend to have better pays than domestic women labours. The domestic women labours have been discriminated and not equally treated in the sector on par with their male counterpart. The work tendered by them is highly individualized and non-standard work. Therefore it is very difficult to organize or regulate their working nature. They are facing the triple exploitation i.e., the discrimination based on gender as well as class and also mostly exploited by employers. Instead of violation of gender justice, the domestic labours need is increasing significantly in global level. This situation warranted to codify their right for ensuring dignified life.

The domestic women labour does not cover in the codified labour laws like as to apply in all establishments. The universal principle of equality has not been adapted to streamlining their life in common social life. Hence the right of domestic women labours of gender justice has been deprived and practice of discrimination prevailing to isolate them from application of labour law and welfare laws because domestic work is not uniformly practiced. In this context it is important to define conceptual definition of domestic women labours. The domestic labour debate was started in 1960's and 1970's in the western academic amongst feminist. It is one of

the oldest and most important occupations for millions of women in the world who does not have education, economic resources and other opportunities. The domestic labour system renders employment to millions of people for meet over daily needs by doing domestic services. The domestic women labours are illiterate, poor, unskilled and downtrodden section in the society.

Definition: It is difficult to define the ‘domestic service’ however, the Convention concerning Rights of Domestic Workers, 2011 and its Recommendation attempted to define the domestic workers in Art.1:

“(a) the term domestic work means work performed in or for a household or households;

(b) the term domestic workers mean any person engaged in domestic work within an employment relationship;

(c) a person who performs domestic work only occasionally and periodically and not on an occupationally basis is not a domestic worker.”

In the above definition, the term domestic worker refers to persons who engaged with particular tasks and duties to perform household work such as cooking, cleaning house, laundering, gardening and so on. However the domestic works are not considered as an occupation in the light of the ILO’s International Standard Classification of Occupations (ISCO-08) except for certain cases. The conferring status of occupation is different country to country. Conversely the Indian enactment also defined terms associated to the domestic works such as unorganized worker, home-based worker and wage worker etc. in the Unorganised Sector Social Security Act, 2008.

The term “*Unorganised worker*” in section 2(m), to mean a worker working home based, as self-employed or wage worker in the unorganized sector and also the term including the workers from the organised sector, who are taken away from being covered under the provisions of any of the enactments enumerated under the Second Schedule annexed to this Act.

Further, the Act has defined “*home-based worker*” under section 2(b), as a person engaged in the production of goods or services for an employer in his or her home or other premises of his

or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.

The Act also defines “*wage worker*” under section 2 (n), means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.

Therefore, the domestic works have been differently defined country to country without applying core labour legislations. In India also labour legislation core-8 would not give application to domestic works. In this background and context, this paper attempts to analyse the rights of domestic women labours in gender justice perspective in the light of various instruments dealing with women rights.

RIGHT OF DOMESTIC WOMEN LABOURS IN INTERNATIONAL LEVEL

Women have been discriminated from mother’s womb to grave in walk of life. After the end of World War – I, the International Labour organization (ILO) had been established with the mandate to set the labour standards, formulate policies to protect and promote the welfare of labours women and men in the world. The ILO has devised mechanism to alleviate the conditions of the domestic women labours, adopted the Convention on Domestic Workers, 2011 with recognition of the gender justice and authorizing and ensuring rights set out in the various conventions particularly dealing with women rights. The ILO Convention No. 189 has drafted further ensuring rights to particular kind workers carrying out the domestic rights in the auspicious of the United Nations. The first premier document of the Universal Declaration of Human Rights (UDHR), 1948 has recognized render justice under its preamble and articles 1

and 2. The UDHR declares that every human personality is entitled declaration enunciated all rights and freedoms without distinction of sex. Similarly, discrimination in the enjoyment of civil, political, economic, social and cultural rights on the basis of sex has been prohibited under the international covenant on civil and political rights (ICCPR), 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 respectively. Further article 3 of the both legally binding covenants expressly dictates that the equal rights of men and women to the enjoyment of rights should be guaranteed without distinction as to sex. The UDHR is considered as 'soft law' because it lacks enforcement mechanism but the both covenants are considered as 'hard law'. These covenants have effective enforcement mechanism for enforcing covenant enumerated rights if the state parties violated these rights.

Gender Justice in international law has acquired the status of *jus cogens* i.e. States practices or some legal documents derive authority from pre-emptory norms of international law because such rules never require creation but do they require realization. The various international human rights instruments have ensured the right to non-discrimination, equality of treatment and decent standard of life etc. The State parties to such instruments submitted its obligations to respect, to protect and to fulfill. This is popularly called as tripartite typology of obligation in the international human rights law. The United Nations sponsored conventions dealing particularly women recognized right of the equal treatment of men and women in all spheres of life. The recognition of women's human rights has been focused after Beijing Platform of Action, 1995 which advocated the gender justice. It explicitly mentioned in the preamble to the charter of the United Nation. All international instruments expressly state the States should not discriminate on the grounds of sex. India has signed a number of international conventions related to moment. These instruments are fixed state responsibility to fulfill its international obligations.

The landmark achievement in Women's right is U.N.O's adaptation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It was adopted under the aegis of the United Nations on 1979 and it came in force on 1981. It has most comprehensive rights related to Women's human rights and established legally binding obligations on the State parties to end discrimination against women. CEDAW may be considered as 'World Women's Rights Constitution'. Because it categorically states that the full and complete development of a country, the welfare of the world and the cause of peace

require the maximum participation of women on equal terms with men in all fields. It also provides for equality between women and men in the enjoyment of civil, political, economic, social and cultural rights. It further eliminates discrimination on basis of sex in marriage, family life, sexual exploitation, and to participation in public life. These issues were addressed by CEDAW specifically strengthen to gender justice. The convention is asking state parties to end all forms of discrimination against women and also to ensure equality between women and men in all walks of life such as in political and public life with regard to nationality, education, employment, health and economic and social benefits and well beings. Further, it asked to state parties to take account of women's who are facing problems in rural areas and their special role in economic survival in the rural family hood. In totally the convention has specifically affirmed women's rights in all fields in the world.

The Optional Protocol to CEDAW has been adopted by the U.N. General Assembly on 1999 which seeks to allow individuals, or groups of individuals who have exhausted national remedies, can approach to committee for alleged violation of convention enumerated rights against their governments. The Optional Protocol has established a committee on the Elimination of Discrimination Against Women. The Optional Protocol empowers the Committee on CEDAW to conduct inquiries into grave or systematic violations of the convention in countries that are parties to the convention and to the optional protocol. India has not signatory of Optional Protocol to CEDAW. The convention on the Rights of the child, 1989 prohibits discrimination on the basis of sex. The Declaration on the Elimination by violence against women 1993 was adopted by the United Nations. The CEDAW states that the State parties should condemn violence against Women and promote their protection against any form of violence. The World Conference on Human Rights held in 1993 in Vienna upheld the Women's rights as human rights and unanimously asked states parties to protect Women's rights. In addition, these conventions, four international conferences of women held under the aegis of United Nations. The last conference held in Beijing in 1995. It led to the adoption of the Beijing Declaration and Programme of Action. The Beijing Platform for Action 1995 identified women's rights issues relating to women. These are

1) Women and poverty; (2) education and training of women; 3) Women and health; (4) Violence against women; (5) Women and armed conflict; 6) Women and the economy; 7) Women in power and decision making; 8) Institutional mechanisms for the advancement of

women; 9) Human rights of Women; 10) Women and the environment; 11) Women and the Media; and 12) the girl child.

International human rights jurisprudence has clearly established states obligations under it to protect and promote women's rights. The above discussed international instruments have obviously fixed and imposed responsibility and the duty on the state parties to protect and to promote the human rights of every woman within its jurisdiction without any discrimination on grounds of sex. It also explicitly states that promote gender justice and depicts them should treat equally on par with men.

Right of domestic women labours:

The above set out rights of women in the UN sponsored conventions, the International Labour Organisation (ILO) has adopted the Convention No.189 deals the domestic workers right. The convention has consisted of 28 articles and defines the domestic worker, domestic work and explain to whether the domestic work is an occupation etc. The international Labour organization stated that *"challenge of reducing decent work deficits is greatest where work is performed outside the scope or application of the legal and institutional frameworks."* Hence, it is pre-emptory requirement for all countries to the right of ensure domestic women labours of decent and dignified life in the mainstreaming of the society. The nations should prepare legislative and policy formulations to ensure their rights thereby the domestic women labours should bring in the ambit of application of labour laws. The principle was mandated by the United Nations Committee on Economic, Social and Cultural Rights reports stated in the context of Art. 6 enumerated right of work (ICESCR, 1966), *"domestic work must be properly regulated by national legislations so that domestic..... workers enjoy the same level of protection as other workers."*

In guise of the above, ILO has played a vital role for designing of labour law for domestic workers. The conventions and its recommendations provide the authoritative guidance on law and policy regarding domestic workers. The convention imposes the international obligations on the state parties for ensuring conventions enumerated domestic workers rights. For this effect, In June, 2011, the International Labour organisation's Conference adapted the

Convention concerning Decent Work for Domestic Workers and its Recommendations (No.201) supplement to the convention (C-189), 2011. Both the instruments specifically apply to the domestic women labours for ensuring specific labour standards and protection. Apart from these, all other ILO's prescribed conventions standards also apply to the domestic workers if the C-189 failed to prescribe otherwise. The ILO's EIGHT conventions have universal application and ratification. These conventions address the fundamental principles and right at work:

- (i) The Freedom of association and Protection of Rights to organize Convention, 1948 (No.48) and the right to Organise and collective bargaining Convention, 1949 (No.98).
- (ii) The Forced labour Convention, 1930 (No.29), and the abolition of Forced Labour Convention, 1957(No.105).
- (iii) The Equal remuneration Convention, 1951 (No.100) and the Discrimination (Employment and occupations) Convention, 1958 (No.111).
- (iv) The minimum Age Convention, 1973 (No.138) and the Worst forms of Child Labour convention, 1999 (No.182).

The other following ILO conventions also mandate the standards relating to the regulation of domestic works such as;

- (i) The Wage- Fixing Machinery Convention, 1928(No.26) and the Minimum Wage Fixing Convention, 1970 (No.131);
- (ii) The Protection of wage Convention, 1949 (No.95);
- (iii) The Maternity Protection Convention, 200 (No.183);
- (iv) The Workers with family Responsibilities Convention, 1981 (No.156);
- (v) The Termination of Employment Convention, 1982 (No.158);
- (vi) The Private Employment Agencies Convention, 1997 (No.181);
- (vii) The Migration for Employment Convention (Revised), 1949 (No.97) and the Migrated Workers (Supplementary Provisions) Conventions, 1975 (No.143).

The above stated conventions have the principle pre-emptory norms thereby does it have universal application. The rights and fundamental principles set out in these conventions also applicable to the domestic women labours generally. The Domestic Workers Convention, 2011

(No.189) and its recommendation (201), particularly, has ensured the decent life and work for domestic labours and change its labour policy regulations in this sector because it based on the conviction that the domestic workers are workers like other sector workers. Therefore they are equally entitled to respect their right in par with other sector workers. The convention mandates all its State parties *“to ensure the effective promotion and protection of the human rights of all domestic workers (Art.3).”* Conversely another direction was contained under Art.6 that *“domestic workers enjoy fair terms of employment as well as decent working condition like workers general and if they reside in the household, decent living conditions that respect their privacy.”*

The Convention and its Recommendation set out the right of domestic workers wherein their rights of enjoy labour and social protection guaranteed with particular attention being given to migrant workers, live-in domestic workers and young domestic workers. Therefore the Convention provides that the minimum universal standard to domestic workers right of working conditions. The convention set out the general principles which the government should carry out but the recommendation provides for the more detailed guidance on legal, policy and practical measures for providing decent work for domestic labours in the light of Art. 18 of C-189. The C-189 provides the following fundamental rights to the domestic workers such as-

- (i) Basic right of domestic workers;
- (ii) Information on terms and conditions of employment;
- (iii) House of work;
- (iv) Remuneration;
- (v) Occupational safety and health;
- (vi) Social security measures;
- (vii) Minimum standards concerning young domestic workers;
- (viii) Standards concerning live-in workers;
- (ix) Standards concerning the migrant domestic rights;
- (x) Private employment agencies in measures to be put in place; and
- (xi) Dispute settlement, complaints and enforcement mechanisms.

The rights have been prescribed in comprehensively and the C-189 mandates to State parties to implement and formulate policies in their national legislative and executive level consequently enforce the right of domestic women labours.

RIGHT OF DOMESTIC WOMEN LABOURS IN INDIA

The Constitutional law is a supreme law. The Part-III of the Constitution guaranteed fundamental rights in Articles 12 to 35. It can be enforced by court of law. Similarly, Part-IV provides the social and economic rights by means instruction and direction to the government and it is bedrock of the fundamental governance of the nation. It cannot be enforced by the court of law i.e. policy of the government.

The preamble to the Constitution ensures to every citizen has a right of dignity. Thus any practice to derogate such mandate amounts to violation of the Constitutional principle. Thereby it causes effect on the right set out in the art.19 thus it guarantees every citizen has right to form association, freedom of movement and freedom to profess to any trade, business or occupation or profession. By this article guaranteed right to livelihood to domestic women labours to meet over the daily needs. Conversely article 21 ensures every person has right to life and personal liberty. The court by exercising judicial activism incorporated to various fundamental rights which flow from in this article. Therefore the right of domestic women labours such as right to form association, right to decent standard of life, right to work, right to social security, right to livelihood and right to food have been guaranteed under article 21 of the Constitution by means of liberal interpretation in various cases.

Articles 23 and 24 guarantees the fundamental right against exploitation and the same right ensured to citizens and non-citizens also. Article 21 (1) specifically prohibited traffic in human beings and forced labours. The rights set out in these articles are basic rights of the domestic women labours if such right violated by any person, it can be enforced against him under the parliamentary law. Art.24 provides the prohibition of child labour in hazardous industries.

Apart from these rights, the Directive Principles enunciates welfare State by making laws and formulating policies to provide social security measures. Article 38 directs the State to secure

social order based on justice, social, economic and political for the purpose of promotion of the welfare of the people. Further states that strive to minimize the inequalities in income and eliminates inequalities in status, facilities and opportunities not only amongst individuals but also groups who are engaged with different avocations and residing in different areas. The article 39 directs to the State that ensure social justice and to secure the strength and health of workers, men and women equally treated, equal pay for equal work and to provide children to develop in aspect in health manner. Art.41 provides that State within the limits of economic development make effective provision for right to work, education and to public assistance in case of unemployment, old age, sickness and disablement in case undeserved want. Art. 42 instruct to ensure the just and human conditions of work and article 43 directs to pay living wage for workers. These principles attained the status of fundamental right by interpreting the article 21 of the Constitution. The above stated rights are apparently applicable to the domestic women labours.

The *Unorganized Workers' Social Security Act, 2008* has been enacted to provide Social Security and Welfare of Unorganized Workers. It is a major milestone for informal workers and covers both self-employed and wage workers including domestic labours. The Act provides for formulation of schemes by Central Government on life and disability, health and maternity benefits, old age protection. The Act also provides for formulation of Schemes by State relating to provident fund, employment injury benefits, housing, educational schemes for children, and skill up gradation, old age homes and funeral assistance. It also set up of National Social Security Board and Workers Facilitation Centers. The National Social Security Board shall performs function of recommend to the Central Government suitable schemes for different sections of unorganized workers; advise the Central Government on such matters arising out of the administration of this Act; monitor to Social Welfare Schemes; review the progress of registration and issue of identity cards to the unorganized workers; review the record keeping functions performed at the State level; review the expenditure from the funds under various schemes; and to perform other functions as assigned by Central Government. Apart from these National rural employment Guarantee Act, 2010 and Prevention of sexual Harassment in working Place Act, 2013 also guaranteed certain protective mechanism.

ROLE OF SUPREME COURT TO RECONISE AND PROTECT THE DEGNIFIED LIFE OF DOMESTIC LABOURS

The Supreme Court of India is the World's powerful court. Because of justices are appointed to the Bench according to the administrative discretion of the Chief Justice of India through the system of collegiums. It enables transparency in justice delivery system. The Court has the power of judicial review through which laws have been changed in accordance with social transformation. The Court had many activists' judges. They have interpreted the fundamental rights provisions of the Constitution on par with internationally recognized rights. These have been done by the Court through its inherent powers while deciding cases by incorporative process.

The Supreme Court has held that right to dignified and qualified life as fundamental right in *Francis Coralie v. Administrator, Union Territory of Delhi* (AIR 1981 SC 746), *Chameli Singh v. State of Uttar Pradesh* (AIR 1996 SC 1051) and *CERC v. Union of India* (AIR 1995 SC 922) etc. In *Bandhuva Mukthi Morcha v. Union of India* (AIR 1984 SC 802), the Supreme Court categorized Art.21 as the heart of the fundamental rights and expanded it ambit as follows-

“to live with human dignity, free from exploitation. It includes protection of health and strength of workers, men and women, and of tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are minimum conditions which must exists in order to enable a person to live with human dignity. No government can take any action to deprive a person of the enjoyment of these basic rights. ”

In the light of above, the Supreme Court has introduced a qualitative concept in Art.21. In the same way the certain rights, such as comprehensive legislation to protection of rights of domestic workers, guarantee of minimum wages, formulation of policies such as payment of wages, weekly holidays and medical assistance and safety of women and children employed as domestic workers, were sought to the domestic workers in *National Democratic Workers Welfare Trust v. Union of India* (W.P (PIL) No. 2810/2012) but in the pendency of the case, the government submitted a Unorganized Sector Workers Bill, 2004 for which safety, health

and social protections enumerated to the domestic workers before this case there is no such provisions provided in the Bill. In *Delhi Domestic Workers Welfare Trust v. Union of India (SCC 1996 (1))* recognized the trust to represent its members who were victim of rape in train travelling from hometown to New Delhi while going to domestic work in Delhi. The court directed women commission to study ensures the constitutionally guaranteed women rights and directed to provide compensation to them and scheme for rape victim compensation without their right at work. In *Vishaka v. State of Rajasthan (AIR 1997 SC)*, the Court held that right to sexual harassment free of working place as flows from art.21 of the Constitution and there is no existing legislation to curb such practice, thereby the court formulated guidance to be followed in the working place until law made in this respect. The Parliament has enacted the Prevention of Sexual Harassment in working Place Act, 2013. In the above cases, the Court recognized certain rights in the light of article 21 of the Constitution in liberal interpretation. The Court prime responsibility has to act as guardian of fundamental rights.

CONCLUSION

The domestic labours excluded from application of core labour laws. The international level ILO played vital role to protect the rights of labour through various conventions. However, the domestic labours have been given much attention since its establishment because their work not at all considered as a work thereby domestic workers employer and domestic workers did not come in the purview of the application of labour laws. ILO's C-189 enumerates rights of domestic women labours and imposes the obligation on State parties to enact laws and formulate policies to respect the domestic workers right. However various States have ratified the convention in their legal system but India did not ratify it. But the Indian government enacted the law tending to attract the domestic labours, such as the Unorganised Sector Social Security Act, 2008, National Rural Employment Act, 2010 and Prevention of Sexual Harassment in Working Place Act, 2013, failed to cover effective mechanism to uplift the domestic labours. These Acts were absolving the liability of employer to provide social security measures. Therefore, the labour welfare laws which are applicable to the labours such laws should be extended to application of domestic labours so that their rights set out in the Constitutional law will be fruitful. By guaranteeing rights and benefits set out in the labour

laws to domestic women labours without discrimination and minimum wage shall guaranteed to domestic women labours and guarantee shall be made equal pay for equal work both men and women domestic labours so that gender justice can be ensured.

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