

Legal Recognition of Domestic Work

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Regulation of atypical work relations is complex and challenging. Domestic workers can be empowered by bringing them within an effective legal and regulatory framework. While acknowledging the value that labour rights can accord to workers, it must be contextualized within the prevailing realities on the ground. In a rapidly transforming world, labour jurisprudence has floundered in responding and evolving to meet the challenges. This is particularly stark in the context of workers in the informal/unorganised sector. Labour governance and regulatory structures are inadequate and ineffective, further contributing to marginalisation and disempowerment. Consequently, efforts at legislating for a new sector, must take into account how law operates in practice.

In March 2008, the Governing Body of the International Labour Organisation (ILO) decided to include 'Decent Work for Domestic Workers' on the agenda of the 99th session (2010) of the International Labour Conference in an effort to create an international convention for domestic workers. It is hoped that the Convention will contain certain binding standards while also providing for adequate flexibility to accommodate national specificities in ILO member states.

While the ILO process has been the impetus internationally in foregrounding concerns of domestic workers, the recent past has witnessed a flurry of activity nationally, on legal recognition for domestic workers. Noteworthy, at the national level, is the proposed National Commission for Women (NCW) Bill—the Domestic Workers (Registration, Social Security and Welfare) Act 2008. It primarily seeks to register workers, full-time and part-time, and mandates compulsory registration of all placement agencies. The bill also proposes the setting up of a Domestic Workers Welfare Fund to which workers and employers would be required to contribute. The NCW has held a range of consultations with stake-holders on the bill and is in the process of reworking the draft.

Simultaneously, the National Campaign Committee for Unorganised Workers (NCCUW) and Nirmala Niketan have also proposed a Domestic Workers (Regulation of Employment), Conditions of Work, Social Security and Welfare Bill 2008. The bill seeks to regulate the employment of domestic workers to ensure regularity of employment, payment of contribution to the Welfare Fund by employers and domestic workers, setting up a Social Security and Welfare Board and central- and state-level boards to administer the law. This draft also envisages enforcement by the government through a system of inspections at reasonable hours of domestic premises.

It is worthwhile to step back and ask the question: what protection already exists in law? At the national level, extending across states, certain legal protection already exists, though it is poorly implemented. The Child Labour (Prohibition and Regulation) Act 1986 was amended in 2006 to ban children from being employed as domestic workers. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 is another broad legislation that provides scope for regulation of women and children being procured for employment in big cities from poor rural

hinterlands and tribal districts. The Delhi government has sought to regulate placement agencies under this Act and the Delhi Shops and Establishments Act, 1954. It also seeks to invoke the Contract Labour (Regulation and Abolition) Act 1970. Domestic workers are also included in the Unorganised Sector Workers' Social Security Act 2008, a national legislation that provides social security benefits for unorganised sector workers.

Several efforts have also been made at the state level for the protection of domestic workers. Under the Minimum Wages Act 1948, the states of Karnataka, Kerala, Andhra Pradesh, Tamil Nadu, Bihar and Rajasthan have set minimum wage rates for domestic work. The minimum wage rates, however, are based on a differing rationale. Additionally, some states have set up tripartite welfare boards for domestic workers to provide benefits and social security to registered workers. In 2007, Tamil Nadu constituted the Tamil Nadu Domestic Welfare Board by including domestic workers in the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act 1982. In Kerala, domestic workers are currently members, of the Kerala Artisan and Skilled Workers' Welfare Fund.

More recently, Maharashtra enacted the Maharashtra Domestic Workers Welfare Board Act 2008. The Act provides for the setting up of a District Domestic Labour Welfare Board with a wide range of functions. These include the registration of workers as beneficiaries; the distribution of benefits to registered workers in the event of an accident; education finances for children; medical assistance in case of ailments of the beneficiary or her dependants; maternity benefits restricted to two children and funeral expenses in case of death of a beneficiary. Another promising effort at the state level worth noting is the Domestic Workers Bill proposed by the Kerala Law Commission. The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Service, Social Security and Welfare) Bill 2009 is distinctive because it attempts to regulate the entire sector in a more comprehensive manner, not merely in terms of wages, social security or placement agencies.

Why is regulation important but difficult? Whereas it may not be necessary to reiterate the narratives on the appalling working conditions and marginalisation of domestic workers—predominantly women and children—it is important to flag crucial issues that emphasise the need for a holistic approach to regulation. Domestic work is characterised by the invisibility of the work and work place, making it difficult to monitor and organise for collective rights. In India, it is further compounded by feudal structures and identity based (caste, tribe, woman, child) discrimination. This isolation of work and worker can effectively be broken through legislation that lays down workplace norms within a household. Re-ordering the equation from status to contract is the necessary first step to building a framework of labour rights for domestic workers.

Having said that, it is also acknowledged that regulation is difficult precisely because of the invisibility of the work and careful thought needs to be given to the contours of any proposed legal framework. All efforts, thus far, have been tangential, either notifying minimum wages or reaching social security benefits but not addressing the crucial issue of the working conditions of workers. Thus key issues such as a clear definition of what constitutes 'domestic work', wages whether time-rated or piece rated, hours of work, rest periods, overtime, bonus, leave (sick, maternity, casual leave), public holidays, privacy for live in workers, sexual harassment, discrimination, termination and notice period, migration, trafficking and registration of all placement agencies need meticulous legal

scrutiny. Any effort at a national legislation needs to take into account the widely varying practices across the country, and tailor it to be inclusive of all work relations that can be accommodated under the wide umbrella of 'domestic work'.

Perhaps, as important (or even more so) as a legislative framework is the enforcement or implementation mechanism that supports the effective working of the legislation. Conceptualising written contracts for a largely illiterate workforce or envisaging unbridled or inadequate powers to labour inspectors may prove counterproductive. Effective implementation requires a creative blend of civil society, state actors and worker involvement. For instance, Section 15 of the NCW Bill grants powers of inspection to any registered trade union. Evolving new paradigms of labour jurisprudence and out-of-the-box thinking for effective implementation would be the way forward.

Currently, there are several legislations that can assist in protecting and regulating domestic workers. Egregious violations such as bonded labour, sexual abuse and violence have adequate redressal mechanisms within the existing legal framework. A large number of workers are, however, unable to access even these protections accorded by law. Lack of awareness combined with illiteracy, isolation and lack of social capital makes access to justice difficult. It is, therefore, crucial that the law and institutional structures innovate to enable greater access to regulatory and the justice mechanisms for domestic workers. □□□

[source : *Labour File*]