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Protection of Domestic workers in India

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Why is in news? Earlier this month, social workers rescued a 14-year-old girl from a Gurugram home where she was employed as a domestic worker. The incident has highlighted the quality of paid domestic work in urban India, where people risk abuse and exploitation in an unregulated sector.

A brief about Domestic Workers in India

Domestic work is the fastest-growing sector of women and girls' employment in urban India. Official estimates show that as of 2012 39 lakh people were employed as domestic workers, of which at least 26 lakh were women.

But the real figures are obscured due to lack of centralised data and the informal nature of domestic work—in 2010, then Minister of State for Labour and Employment Harish Rawat averred that there was no authentic data available.

Independent estimates such as one by the International Labour Organisation (ILO) place the count anywhere between 20 million and 90 million workers.

Most people come from marginalised castes and underprivileged locations. A Bengaluru-based study in 2016 found 75% of domestic workers were from Scheduled Castes, 15% from OBCs and 8% from Scheduled Tribes.

NGO Anti-Slavery International further notes most of these workers are poor, unskilled, landless and without formal education.

A large number of girls and women (mostly unmarried) migrate from States like Jharkhand, Bihar, Bengal and Orissa – regions with a sizeable population living below the poverty line.

Extreme poverty forces minors, mostly young girls, to drop out of school. Jharkhand, for instance, has the highest school dropout rate in India.

Non-availability of jobs and low literacy rates among rural and tribal communities positions domestic work as the only source of income.

More than 12.6 million domestic workers in the country are minors, with 86% of them being girls. Moreover, 25% of underage domestic workers were below 14 years, according to the data available.

A 2012 study found that, globally, of the total increase in the number of female workers in the labour force, 14.4% contributed to the domestic workforce.

Condition of Domestic workers in India

The informal nature of work within homes means people are both unpaid and underpaid. Rough monthly income reported by domestic workers in New Delhi was chalked up to be ₹1,875, according to a 2009 study (the minimum wage in the State for scheduled employment was ₹5,239)

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There is no legal contract, translating into ill-defined work hours, discrimination and violence, sexual harassment, and exploitation at the hands of placement agencies and/or traffickers.

Between 2010 and 2012, reported cases of violence against domestic workers increased from 3,422 to 3,564, according to the Press Information Bureau of India

Cases of violence witnessed an upward trend during the COVID-19 pandemic. About 57% of domestic workers surveyed between Kochi, Delhi and Mumbai in 2020 reported stigma and discrimination at workplace, and 40% worked without any safety measures, a paper stated

There is “widespread abuse and exploitation of women working as domestic workers, including trafficking of children for domestic servitude”, a 2016 report by Anti-Slavery International concluded

About trafficking and forced labour

It is difficult to demarcate victims of trafficking from people who migrate across State for employment.

ILO has defined domestic work as a “modern slavery” practice, where domestic workers, including minors, “remain vulnerable to abuse, exploitation, forced labour and trafficking”.

The ILO Forced Labour Convention, 1930 defines forced labour as work which is “exacted from any person under the menace of any penalty” and which is “not offered voluntarily”. Women are more likely to engage in forced labour than others in the form of domestic work, an ILO report noted.

A notable framework on human trafficking is the Palermo Protocol, a UN protocol. It defines trafficking as “... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception...”. It also envisages payment to “achieve the consent of a person having control over another person, for the purpose of exploitation...”

Section 370 of the Indian Penal Code criminalises trafficking offences including physical and sexual exploitation, slavery or similar practices, and servitude, although there is no express mention of trafficking for labour.

Minors and mostly young women are offered work by placement agencies on the promise of security, salary, and lifestyle.

Rough estimates show Delhi has about 800 to 1,000 placement agencies itself. But there is little transparency in the way they operate—workers are not told about employment contracts or negotiated wages, and agents often disappear after placing people in middle-class and affluent homes.

Internal migration from poorer to wealthier States in India is a common trafficking route where mostly children and young women are pushed into domestic work, a 2022 report found.

The ILO further examined two most frequented routes for female domestic workers: from Jharkhand to New Delhi and Kerala to Arab States. The report also found that inadequate regulations allowed “unregistered agents to exploit migrants for financial gains”.

Laws govern domestic work in India

There is no dedicated law or policy to regulate people working in the domestic work sector

Indian labour laws do not adequately include domestic workers due to limited interpretations of the definition of “workman”, “employer” or “establishment” (if the home as a private space can constitute a place of work). In most cases, people reside in the same quarters as their employer (the family).

Moreover, the gendered nature of work — involving cooking, cleaning, and care work — casts it as “unproductive” and thus outside the scope of formal labour definitions, experts say. Since they are not included within the scope of labour laws, workers lie outside social protection like minimum wage security.

The first legal recognition came in 2008 in the Unorganised Sector Social Security Act, 2008, meant to provide social welfare to workers—including domestic workers. It was replaced by the Code on Social Security, 2020, which is yet to come into force.

The National Commission of Women proposed a draft Domestic Workers (Registration, Social Security and Welfare) Bill in 2008 after the exploitation of live-in workers from tribal pockets was reported. But it was subsequently put on hold by the government.

Several States have proposed individual legislation to regulate wages and conditions of work. While domestic work was included in the list of scheduled employment under the Minimum Wages Act, 1948, only 10 State governments have implemented this and mandated necessary minimum wages.

The Delhi Government drafted the Delhi Private Placement Agencies (Regulation) Bill, 2012, outlining mandatory registration of all placement agencies, along with one kin of the domestic worker. But the Bill received criticism for not mandating employers’ registration.

In August 2016, the Domestic Workers’ Welfare Bill, 2016, was introduced in the Lok Sabha, which recognised a private household as a workplace, a broader definition of “wages” (including travel allowances, insurance, among others), rights of migrant workers and contract registration. No Bill has been passed yet.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013) includes domestic workers as a specific category of workers – with the house as a designated workplace.

The Indian government prohibited minors from entering domestic housework in 2006, listing it as a form of “hazardous child labour”.

The Juvenile Justice (Care and Protection of Children) Act, 2000 further protects minors. But complications arise through the Child Labour (Prohibition and Regulation) Act, 1986. It states domestic work is prohibited employment for children only up to the age of 14, meaning that children above 14 can legally work under specified conditions (and the home is seen as a “safe” place of work) without falling under the scrutiny of the Juvenile Justice Act.

In 2011, India voted in favour of the landmark ILO Convention 189 aimed at ensuring the legal protection of domestic workers – but the Convention is not ratified yet. India is also not a signatory to Conventions No. 182 on the Worst Forms of Child Labour and No. 189 on Decent Work for Domestic Workers — all of which have been deemed crucial globally.

In June 2019, the Labour Ministry drafted a national Domestic Worker Policy that would regulate placement agencies and include domestic workers under existing laws.

They would have the right to minimum wage, access to social security, protection from abuse and exploitation, pension schemes, health and maternity benefits. But the policy has not been implemented as of 2023.

The way ahead

Government’s intervention in regulating the engagement between domestic workers and their employers is need of the hour to resolve the issue of modern slavery.