



Female paid domestic workers rights and legal framework- An analysis in Indian context with NATLEX database of ILO

Ms.Sreeja Gopal

Part Time Research Scholar, Department of Economics
Dr John Matthai Centre, Aranattukara, University of Calicut
Email - sreejagopal1@gmail.com

Abstract: This paper aims to review the various laws and regulations governing domestic workers worldwide, with a particular focus on the Indian context, using the ILO's NATLEX database. The NATLEX database has been instrumental in examining the rules and acts for domestic workers in different countries. In India, no specific laws have been enacted exclusively for domestic workers, and many proposed regulations are still in the discussion or draft stage. Effective rules and regulations are necessary for the empowerment of domestic workers, and their proper implementation is crucial. However, the invisibility and marginalized status of these workers make enforcement challenging

Key Words: ILO, NATLEX, domestic workers, marginalized status.

1. INTRODUCTION :

As per Article 1 of ILO Convention 2011, the definition of domestic worker is follows "A domestic worker is a person engaged in domestic work within an employment relationship and domestic work means work performed in or for a household". Paid domestic workers are one of the most vulnerable group of labour force and among them female domestic workers condition is miserable. In order to improve the condition of labour force proper rules and regulations for protecting their rights are essential. But unfortunately, there is no sufficient laws and rules are there for domestic workers. This paper is an attempt to critically analyse the rules and laws existing in India for the protection of domestic workers especially female workers with the database provided by ILO, NATLEX. NATLEX is a database of national labour, social security and related human rights legislation. NATLEX provide the database of the 484 rules, orders or regulations of India. Out of this the following categories 'Equality of opportunity and treatment', 'Employment policy, promotion of employment and employment services', 'Conditions of employment', 'Social security', 'Maternity Protection', 'Migrant workers', 'General provisions' are considered for this study. These categories include certain rules and regulations which is applicable to female domestic workers.

2. Background - Domestic workers rights:

ILO Domestic workers convention 2011(c-189) made an initial attempt for making it a decent work by emphasizing minimum wages, social protection against all forms of abuse, violence and harassment, minimum work hours, paid annual leave etc. Regarding the rights of domestic workers, it states that each member must protect and promote human rights of domestic workers. They have a right to a safe and healthy working environment (Article 3 &13, ILO C-189). Till now 36 countries ratified the convention. The following table provides the list of countries and their date of ratification



Table 1: Countries and their C 189 Ratification date

SL NO	COUNTRY	DATE
1	Antigua & Barbuda	28 Jul 2021
2	Argentina	24 Mar 2014
3	Belgium	10 Jun 2015
4	Bolivia	15 Apr 2013
5	Brazil	31 Jan 2018
6	Chile	10 Jun 2015
7	Colombia	09 May 2014
8	Costa Rica	20 Jan 2014
9	Dominican Republic	15 May 2015
10	Ecuador	18 Dec 2013
11	Finland	08 Jan 2015
12	Germany	20 Sep 2013
13	Grenada	12 Nov 2018
14	Guinea	25 Apr 2017
15	Guyana	09 Aug 2013
16	Ireland	28 Aug 2014
17	Italy	22 Jan 2013
18	Jamaica	11 Oct 2016
19	Madagascar	11 Jun 2019
20	Malta	14 May 2021
21	Mauritius	13 Sep 2012
22	Mexico	03 Jul 2020
23	Namibia	09 Dec 2020
24	Nicaragua	10 Jan 2013
25	Norway	08 Jul 2021
26	Panama	11 Jun 2015
27	Paraguay	07 May 2013
28	Peru	26 Nov 2018
29	Philippines	05 Sep 2012
30	Portugal	17 Jul 2015
31	Sierra Leone	25 Aug 2021
32	Spain	28 Feb 2023
33	South Africa	20 Jun 2013
34	Sweden	04 Apr 2019
35	Switzerland	12 Nov 2014
36	Uruguay	14 Jun 2012

Source : ILO Website

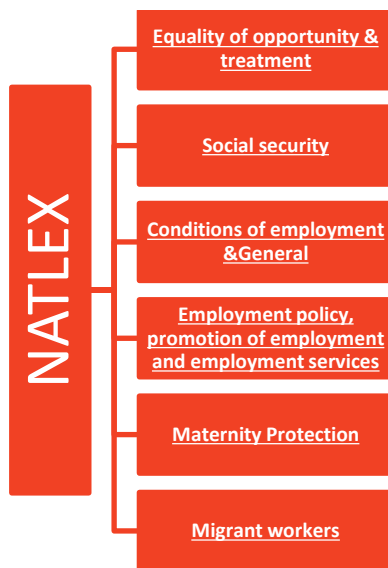
The convention takes place in the year 2011, and by the next year Uruguay, Philippines and Mauritius (2012) ratified the convention. Thirty three other countries also ratified it during the following years. .

3. Objective of the study:

1. This paper is an attempt to critically analyse the rules and laws existing in India for the protection of domestic workers especially female workers with the database provided by ILO, NATLEX.
2. To review the laws and regulations concerning domestic workers in various nations.



4. Conceptual Framework of the study:



From the above it is clear that no specific laws are there in India for domestic workers. But we can apply the general labour laws to them also. But still there exist confusion regarding their status as worker hence in many cases they are excluded from the legal framework. India has not ratified ILO convention on decent work for domestic workers because our national laws and practices are not in conformity with the provisions of the convention (TOI, Mar 18, 2015). National Policy on Domestic workers is under active consideration of the government but there is no time limit for its implementation.

5. Review of Literature:

Even though India government passed more than 40 laws for workers, majority of them are for workers in the organized sector but in India more than 93 % employed in unorganized sector (2014, SEWA). Domestic workers are work in the private household hence they are not come under the definition of workers and that also made their condition miserable(ibid). To include domestic workers under labour law the definition of domestic worker needs to be redefined.

ILO (2013) shows that domestic workers represent a significant share of labour force worldwide and it is an important source of wages to women workers. The study shows that under current laws substantial gap exist for the protection of domestic workers. Domestic workers are exploited on a large scale due to their non recognition as workers(d'Souza,2010). This non recognition and lack of social protection is a major obstacle for achieving decent work (ibid).

The following are the important laws existing in India for workers. To some extent this will be applicable to domestic workers also.

The Minimum Wages Act, 1948:

In this Act wages implies all remuneration expressed in terms of money and employee means any person who is employed whether skilled or unskilled and manual or clerical. Still many states not consider this while employing domestic workers. Very few states agreed to consider domestic workers under this Minimum Wages Act. Under this Minimum wages Act employers are required to pay for overtime work. But many workers under this domestic work category especially women are not aware about this and they continue their work without any time schedule. They work extremely long hours and do not get one day's rest and many of them do not even receive minimum wages also (www. ILO.org).As per the survey of Institute of Social Studies Trust 2009, in Delhi the monthly income reported by domestic worker on average is Rs 1875. Many countries use one of the principal options to set minimum wages for domestic workers: to include domestic workers into the coverage of a generally applicable national minimum wages or to approach it as a sector and fix a separate minimum wage for them .Eight Indian states – Karnataka, Tamilnadu, Kerala, Andhra Pradesh, Rajasthan, Orissa, Bihar and Jharkhand have a fixed minimum wages for domestic workers. But due to lack of proper complaining mechanism violation of minimum wages takes place. As a part of labour reforms in



unorganized sector Government of Rajasthan implemented fixed minimum wages and working hours for domestic workers. Minimum wages has been set as Rs 5642 per month for an eight hour for daily chores like cooking, washing etc. (Hanu, 2018).

Maternity Benefits Act, 1961:

As per this Act no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. As per ILO report more than a third of domestic workers are excluded from maternity protection laws. Pregnant domestic workers may be fired or forced to quit jobs due to the absence of employment contracts and legal protection (ILO Domestic work policy Brief 6) .There are five core elements of maternity protection at work :maternity leave, cash & medical benefits, employment protection & nondiscrimination, health protection & breast feeding arrangements at workplace (ILO convention 183). In India, in order to raise awareness about the benefits of breastfeeding among domestic workers the Association for Consumers Action on safety & Health implemented a project. The project implemented in the slum community of Mumbai. This project helped to identify the obstacles these workers faced in combining work and breastfeeding and created a favourable atmosphere for this practice.

Equal Remuneration Act 1976:

This Act ensures payment of equal remuneration to men and women and work for the prevention of discrimination, on the ground of sex. This Act ensures no discrimination to be made while recruiting men and women workers. In the case of domestic work, majority are women. On average domestic workers received less than half remuneration of workers in Male dominated sectors (ILO, April 2013).The Universal Declaration of Human Rights affirms the right of every one who works without any discrimination to “ equal pay for equal work” (Article 23).

Interstate Migrant Workmen (Regulation of Employment &condition of service) Act 1979 & its amendment:

This Act is very relevant to domestic workers because many of the domestic workers migrated from rural areas to urban areas in seeking employment. This Act talks about the duties and obligations of contractors and it states that a pass book affixed with a passport size photo of the workman is essential and the name and place of the establishment wherein the workman is employed, the period of employment, the proposed rates and modes of payment of wages etc are depicted in this. This is with the aim of protecting labourers from the exploitation of contractors.

Protection of Human Rights Act, 1993:

This Act extends to all of India. National Human Rights Commission and State human Rights commission and Human Rights Courts are essential for the protection of human rights. Domestic workers can also seek the help of these commission if there occurs any violation of rights.

Unorganized workers social security Act, 2008:

This Act provide social security and welfare to unorganized workers and domestic workers belong to this category. As per this Act an Unorganized worker means a home based worker, self-employed or wage worker in the unorganized sector. This Act specially mentioned the domestic worker in its definition. “Wage worker means a person employed for remuneration in the unorganized 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”(Unorganized workers social security Act,2008) . As per this Act Central and state governments need to introduce various welfare schemes for their social security. But due to the special nature of their work, domestic workers are not even treated as workers. The main reason for this is private household is their workplace and it is difficult to identify them. This Act recommended the setting up of Central and State Social security Board for Unorganized Workers.

Sexual harassment of women at workplace (Prevention, Prohibition & Redressal), 2013:

This Act came into force to prevent and protect women from sexual harassment at workplace and thereby ensure a safe working environment for women. For female domestic workers the possibility of sexual harassment is



more and many cases are there regarding employer's exploitation. These female domestic workers are poor and illiterate and they came from backward communities. Hence they are treated very badly by some employers. Employers very well known that these poor women are unaware about such rules and acts and they will never respond due to fear and shame.

Delhi Private Placement Agencies (Regulation) Order, 2014:

This order is applicable to the National capital of Delhi. This is to prevent the exploitation of domestic workers from the clutches of private placement agencies. This emphasize that the payment to domestic workers will be through a bank account and it lays down the mandatory registration of placement agencies and imposes a fine of Rs 50000 for non-registration of placement agencies. This order must expand to all the nation because now there is no proper registration of placement agencies. Some agencies will register with the shops and establishment act and others won't register. Hence there is no proper data regarding them. Without proper data and records it will be difficult to prevent the exploitation.

6. Global overview of domestic worker regulations:

As per the NATLEX database 18 countries have their own laws or acts exclusively for domestic workers. In India there are no laws exclusively for them. Eswatini , Malawi ,Zambia ,Zimbabwe- are the four African countries formulated laws for domestic workers. European countries like Norway, Finland , Germany, Leichenstein ,Hungary ,Malta -have special laws for them. Out of 44 European countries only 6 countries have such special laws for domestic workers. Jordan, Kuwait , Syrian Arab Republic are the three Middle East Countries formulated laws for domestic workers. Indonesia, Philippines, Thailand are the three Asian Countries and two Caribbean countries-Saint Kits& Nevis and Saint Vincent& Grenadines also have laws for them.

Table 2: Countries and laws for domestic workers

Sl No	Country	Rules/Acts/Laws
1	Eswatini	Regulation of wages domestic employees
2	Finland	Respecting the conditions of employment of DW(1977,2011)
3	Germany	ACT on C 189 of ILO (2013) ACT on Mandatory working conditions for DW
4	Hungary	Decree no 10 of the Ministry of labour(1978)
5	Indonesia	Temporary suspension of the Dispatch of Indonesian Domestic Helpers to Jordan(2009)
6	Jordan	Regulation No 11 of 2013 amending Regulation No 11 of 2009 concerning DW,cooks,gardeners and similar categories Instructions for the conditions and procedures of Licensing and organising the private offices of bringing & employing Non Jordanian DWs of the year 2006
7	Kuwait	Ministerial decree No 305/2006 regulates the situation of migrant workers in the private sector dealing with problems related to DWs
8	Leichtenstein	Notification to publish a model contract of employment for Dws
9	Malawi	Wages(Domestic servants)(Amendment) Order ,1993(G.N No 87 of 1993)
10	Malta	Domestic service wages council wage regulation order(L.NNo 7 of 1976)(S.L452.40)
11	Norway	Ordinance(No 716 of 2002)respecting domestic work,superintendence and nursing in employers private home or household
12	Philippines	Implementing Rules&Regulations of Republic Act No 10361 otherwise known as the Domestic Workers Act or the Batas kasambahay Domestic Workers Act (R.A No 10361)
13	SaintKitts&Nevis	Domestic Workers Act (R.A No 10361)
14	Saint Vincent& Grenadines	Wages Regulation(Domestic Workers)Order,2008(No 31 of 2008)(1982,1989)



15	Syrian Arab Republic	Regulation No 81 of 2006 governing private agencies for the recruitment & employment of Non Syrian female Dws & Nannies
16	Thailand	Ministerial Reg No 14 on the Protection of DWs B.E.2555 (A.D 2012)
17	Zambia	The Minimum wages and conditions of employment(Domestic workers) order 2011(S.I No.3of 2011)
18	Zimbabwe	Labour Relations(Domestic Workers) Employment(Amendment) Regulations,2007(No.17)

Source: ILO NATLEX

There are many writings in world literature regarding the plights of domestic workers. British Historian Antoinette Burton states that Indian Novelists have written very little about domestic workers (Jansen). In his book 'Like Family', Hansen explains the laws which impact harshly on the lives of black migrated domestic workers. In India Baby Halder in her book 'A Life less ordinary' shows the life of a domestic worker.

7. Indian Scenario:

India Government proposed a National Policy on domestic workers (but that is still in the draft stage). This draft recommended for the compulsory registration of private placement agencies. This also stood for the rights of workers to organise and form associations for them. Several state governments in India proposed various bills for them. Kerala Government recently proposed a Bill to protect the rights of domestic workers but that is under the scrutiny of Law department. The National Domestic Workers Movement is registered as National Domestic Workers welfare trust under the Bombay Public Trust Act 1950. Since 1985 this movement stood for women, child and migrant domestic workers. ILO Convention 189 and further recommendation 201 were the first two International Labour standards dedicated to domestic workers. These conventions work for the human rights and fundamental rights of domestic workers and it also suggested ways for improving their decent working conditions. India government still not ratified the ILO Convention 189 .

8. Conclusion:

Domestic workers have been excluded from many labour rights; hence an action has been required against their exclusion from labour and social protection, reduce decent work deficits they face and promote gender equality. Proper rules and regulations and its implementation are necessary for this. Various governments, NGO's, social activists, employers and employee's union must work for this. Organising domestic workers are important for their empowerment. Organising is not an easy task it is a long process and great care and cooperation are essential for this (2010, Bonner).

REFERENCES:

Journal papers :

1. Nath, Aparna. "Baby Halder's A Life Less Ordinary: Domestic Work, Motherhood and the Dalit Woman." *ANTYAJAA: Indian Journal of Women and Social Change* 3.2 (2018): 230-239.
2. Pape, K. (2016). ILO Convention C189—a good start for the protection of domestic workers: An insider's view. *Progress in Development Studies*, 16(2), 189-202. <https://doi.org/10.1177/1464993415623151>
3. SEWA. 2014. *Domestic Workers' Laws and Legal Issues in India*. WIEGO Law and Informality Resources. Cambridge, MA, USA: WIEGO.

Proceedings Papers:

1. ILO. "NATLEX (Database of National Labour, Social Security and Related Human Rights Legislation)." (2005).
2. International Labour Organization. "NATLEX database." (1999).



3. Albin, Einat, and Virginia Mantouvalou. "The ILO convention on domestic workers: From the shadows to the light." *Industrial law journal* 41.1 (2012): 67-78.

4. Bonner, Christine. "Domestic workers around the world: organising for empowerment." *Social Law Project Conference, Cape Town*. 2010.

5. d'Souza, Asha. "Moving towards decent work for domestic workers: An overview of the ILO's work." (2010).

Books :

1. Jansen, Ena. *Like family: Domestic workers in South African history and literature*. Wits University Press, 2019.

2. International Labour Office. *Domestic workers across the world: Global and regional statistics and the extent of legal protection*. Geneva: International Labour Office, 2013.

Web References :

1. [NATLEX - Home \(ilo.org\)](http://ilo.org)

2. [NATLEX - database of national labour, social security and related human rights legislation | International Labour Organization \(ilo.org\)](http://ilo.org)

3. [THE MINIMUM WAGES ACT, 1948 \(labour.gov.in\)](http://labour.gov.in)

4. [Microsoft Word - sexual harassment at workplace Bill.doc \(new.nic.in\)](http://new.nic.in)

5. [Delhi Private Placement Agency, Regulation Order, 2014 | WIEGO](http://wiego.org)