

A Psychological And Human Rights Perspective On Exploitation Of Domestic Workers In India



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Abstract

Human Rights Watch gives a piquant image of domestic workers in its report, around ten million of global population are engaged as workers in private households. Domestic workers not only had been vehemently ignored by the law and legal system, it rarely reached the doors of human rights protection in informal employment. This paper explores the intersection of human rights and psychology, examining the profound psychological impact of mistreatment on domestic workers. From a psychological perspective, the power dynamics in employer-employee relationships contribute to learned helplessness, diminished self-esteem, and emotional trauma among domestic workers. Household being the workplace gives a source of employment to the migrants, women & children. The domestic workers are vulnerable and unprotected class of employees specially women. There are several factors that are compounded for their vulnerability like indecent working conditions, caste, patriarchy, sexuality, and marginalization. Despite the mechanism of legal protection, domestic workers are abused physically, mentally and sexually. As human rights are inherent to everyone, international law requires that domestic workers' rights be recognized without discrimination. The new system of governance that is envisaged by human rights law every individual is to be considered keeping in view equality, fairness and reasonableness. This research is to explore rights of the domestic workers, their human rights protection and prevention from abuse through suggested measures.

Keywords: Domestic workers, workplace, human rights, rights, women, Psychological.

1.1. Introduction

Generally, domestic workers are called 'servants', 'helpers' and 'maids', which has caused them to feel insecure and inferior. There is a high percentage of domestic workers who belongs to backward and vulnerable groups. In the most cases, they are not educated, not skilled, and do not know how to navigate the urban labour. They are underpaid, poorly regulated, and undervalued in their work. A number of major issues they face include poor wages, poor working conditions, undefined work time, violence, abuse, sexual harassment, forced migration, victimization by traffickers'/placement agencies, lack of opportunities for skill development, and a lack of welfare measures, which leads to stagnation. In many cases, these workers perform the tasks of caring for elders, children, and people with disabilities, which enable household members to maintain employment. These workers are excluded from labour laws and benefits, as well as being deprived of fundamental rights such as they often face disadvantages when it comes to exercising their right to freedom of association and collective

bargaining. There are cases where domestic workers earn less than basic wages, simultaneously not being protected by basic labour laws and constitutional protections. Consequently, domestic workers in private households are subject to abuse and at high risk of exploitation.

Around 4.5 percent of employees worldwide are employed in domestic work.¹ In the post-Independence era, the government enacted over 40 central labour laws. Despite this, these laws have only benefited workers in the organized sector, while 93 percent of workers are unorganized.² Due to the kind of their work and the kind of employment relationship, the fact that they work in a private household instead of in a public place, they are not included in the coverage of existing laws as a result of the nature of their work. There are limitations of term 'worker', 'employers', and 'establishment' in Indian labour laws that restrict the protection that domestic workers are entitled to due to the restrictive terminology in those laws. With the introduction of the "Unorganised Worker's Social Security Act, 2008" for the first time,

¹ Social Protection: Human Rights, "Domestic Workers", available at: <https://socialprotection-humanrights.org/key-issues/topical-issues/domestic-workers/> (last visited on May 26, 2024).

² SEWA, "Domestic Workers' Laws and Legal Issues in India. WIEGO Law and Informality Resources", (Cambridge, MA, USA: WIEGO, 2014) available at: <https://www.wiego.org/sites/default/files/resources/files/Domestic-Workers-Laws-and-Legal-Issues-India.pdf> (last visited on May 26, 2024).

domestic workers were recognised as unorganised workers.³ Later, repealed by “The Code on Social Security act, 2020”.⁴ What constitutes domestic work is still a conflicted issue.

Demands for domestic helpers are increasing because of variance in living standards, social and employment trends. According to Periodic Labour Force Survey, rate of female (18 years and above) labour participation in urban areas has increased 25.6% during January to March 2024 and female worker participation has increased to 23.4% reflecting the overall rise in female participation.⁵ Women empowerment is at its peak not only at urban level but rural sectors as well. Women are coming out and engaging in work. With this trend, not only in extended family but also in nuclear family, support is needed from any caretaker and helper. There are many reasons which lead women to enter into domestic work. Women from disadvantaged communities or poor background may face unequal treatment based on race, gender, ethnicity caste and often have very few employment opportunities. Lack of education, lack of opportunities in agriculture, manufacturing and marketing industries and few marketable skills are also the major reasons that force person to come into domestic work. Cooking, cleaning and caring for elderly and the children is almost all over the world considered as female work, so male rarely engaged in this kind of job.⁶ Most of domestic workers are belongs to vulnerable communities. Moreover, subjected to served food in separate pots, sometimes they cannot use the same washroom as their master/employer does. Overall, the domestic workers, conditions of work are undignified, unfair, unjust, and unsatisfactory.

1.2. Domestic Workers and Struggle for Social Justice

Domestic workers play vital role as a caregiver though there is dearth of access to social protection. It is estimated that children under the age of 15 years (1.9 billion children) and 200 million older people will require care by 2030 compared to 2015, this represents an rise of 200 million human being in need of attention.⁷ The International Labour Organisation (hereinafter ILO), estimates that women globally account for 75.6 million domestic workers for three quarters.⁸ Women in domestic workplace constitute at higher percentage than men. Considering the unequal representation of women, ensuring the rights of domestic workers is essential for achieving gender equality. The Indian Constitution provides for gender equality and non-discrimination, practically the societal framework is developed in such a manner that provides for different treatment according to their sex. The existence of women's inequality and social injustice is a constant source of the inevitable struggle of women. Claim for equality, justice, and independence are inherent in the structure of societies, which is an extremely difficult social process, as it varies in nature, scope, density, and degree in different societies.⁹ There are number of social factors that compel women to enter into unorganised sector like poverty, desertion form husband, discrimination, lack of education, health, violence, lack of suitable employment, harassment at workplace, and societal neglect.¹⁰

To address these vulnerabilities, the ILO adopted “the Domestic Workers Convention, 2011 (No. 189)” in 2011 (hereinafter Convention)¹¹ and “Recommendation No. 201”. Governments, together with employers' and workers' organizations, have extended policies and laws to cover domestic workers Over the past decade following the implementation of these instruments. The members

³ The Unorganised Workers' Social Security Act, 2008 (Act No. 33 of 2008).

⁴ The Code on Social Security, 2020, (Act No. 36 of 2020).

⁵ Ministry of Statistics & Programme Implementation (May 15, 2024) available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2020668>

⁶ Dr. P.C. Tripathy, *Crime against Working Women: Position of Working Class Women in Present Indian Society* (Ashish Publication, New Delhi, 1998).

⁷ International Labour Organisation, “Rights of Domestic Worker” (March 8, 2024) available at: <https://www.ilo.org/resource/news/new-ilo-policy-brief-calls-domestic-workers-be-included-care-policies> (last visited on May 26, 2024).

⁸ *Ibid.*

⁹ L. Devasia and V. V. Devasia, *Empowering Women for Sustainable Development*, 137- 138 (Ashish Publishing House, New Delhi, 1994).

¹⁰ Karanjule Sarika Kantilal, “Protection of Women Working in Unorganized Sectors as A Domestic Workers An Analytical Study With Human Rights Perspective”, Ph.D. Thesis (2022) *Shodhganga*, available at: <https://shodhganga.inflibnet.ac.in/handle/10603/392653>

¹¹ International Labour Organisation, “C-189 Domestic Workers Convention 2011” (June 16, 2011) available at: https://webapps.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:2551460#:~:text=Every%20domestic%20worker%20has%20the,and%20health%20of%20domestic%20workers. (last visited on May 27, 2024).

of the “convention” shall ensure that domestic workers’ human rights are protected and promoted. By implementing such measures, we can reduce domestic workers’ vulnerability, improve their income security and health care, and enable them to change from informal to formal employment.

As per art. 1 of the Convention, ‘domestic work’ means “work performed in or for a household or households” and term ‘domestic worker’ means “any person engaged in domestic work within an employment relationship.”¹²

Domestic work is done in or on behalf of a private household or households, and all individuals who perform such work are covered by the Convention in the definition.¹³ In addition to domestic workers, this definition includes gardeners, drivers, security guards, and other household workers. With this definition, many aspects of the sector are eliminated that are gender-specific, so those who work sporadically or occasionally are excluded. Domestic work refers to tasks carried out within or on behalf of a private household, which is applicable to all individuals who are engaged in such work as a part of their employment. The definition of this term includes a wide range of workers including domestic workers, gardeners, drivers, security guards, and other workers employed by private households. The differences in wages, working conditions, and patronage relationships would also make it difficult to make claims for each category.¹⁴

It is necessary to define ‘Domestic help’ to understand the scope of protection towards the employees in unorganised sector. Domestic help is defined “as a person who is engaged on a part-time or hourly basis in domestic service, in return for remuneration payable in cash or kind or both, for a fixed period, at the household or outside of the household of the employer, where the employment terms may be expressed or implied.”¹⁵

There are a variety of situations associated with domestic work, so it is not a homogeneous industry. There are, however, a number of reasons why social protection coverage does not exist. Among the legal

challenges are exclusions from labour and social security laws to issues related to entry requirements (e.g. minimum working hours). Furthermore, administrative barriers such as non-transparent and complicated application procedures or regional diversity prevent full coverage. Monitoring and enforcing compliance are also challenging, as are societal norms that disregard domestic work as a form of employment.¹⁶

1.3. Classification of Domestic Workers

Live-in Domestic workers: Term “live-in domestic worker” refers to domestic worker who regularly lives at their workplace. In addition to housekeeping, laundry, utensils, cooking, caring children and old, they do all types of domestic work. As a result, they are dependent on their employers to provide them with basic needs such as food and shelter to live. It is observed that most live-in domestic workers are women who have made the move from their villages to cities in an attempt to find employment. In most cases, it is a child, a young girl either unmarried or married, and a woman who is separated from her husband or widowed.¹⁷

Part-time Domestic Workers: are locals or migrant workers from city they live, usually employed as part. In many cases, they live in slums & work for multiple employers. The part-timers are not called part-timers because they only work part-time, but because they do not stay with their employer for a long time and they are not expected to be on call at all times. In a nutshell, they either work for one employer all day or perform specific tasks for several employers throughout the day, such as washing clothes, doing dishes, or cooking meals for a variety of clients. In comparison to full-time employees, part-time employees are less dependent on their employers than full-time employees are. They not only manage their own homes, also run the homes of their employers. In contrast to live-in domestic workers, those who reside separately tend to depend less on their employers for daily necessities and exhibit a higher level of independence.¹⁸

¹² *Ibid.*, art. 1.

¹³ International Labour Organization, “C189 - Domestic Workers Convention, 2011” (No. 189) available at: https://www.ilo.org/dyn/normlex/en/f?p=NORML_EXPUB:12100:0::NO::P12100_ILO_CODE:C189.

¹⁴ N. Neetha, “India’s Domestic Workers: Key Issues Remain Swept Aside” *The Hindu Centre for Politics and Public Policy* (Jun. 19, 2023) available at: <https://www.thehinducentre.com/the-arena/indias-domestic-workers-key-issues-remain-swept-aside/article66984860.ece> (last visited on May 29, 2024).

¹⁵ N. Neetha, “Contours of Domestic Services: Characteristics, Work Relations and Regulation” 52

(3) *The Indian Journal of Labour Economics*, 2009, available at: <http://idwfed.org/en/resources/contours-of-domestic-service-characteristics-work-relationsand-regulations> (last visited on May 27, 2024).

¹⁶ Social Protection: Human Rights, “Domestic Workers”, available at: <https://socialprotection-humanrights.org/key-issues/topical-issues/domestic-workers/> (last visited on May 26, 2024).

¹⁷ National Domestic Workers’ Movement, “Domestic Workers” <https://ndwm.org/domestic-workers/> (last visited on May 29, 2024).

¹⁸ *Ibid.*

The Migrant Domestic workers: Females from the villages migrate to urban areas to work as domestic workers. The two ways in which domestic workers can migrate in India: (1) Interstate domestic workers and (2) Overseas domestic workers. In either case, whether they remain in India or go abroad, they are faced with unfamiliar surroundings, are separated from their families, and adjusting to new cuisine, languages and cultures. There are a lot of temporary migrant workers who are also live-in domestic workers, which makes them particularly susceptible to abuse, long hours Working and poverty. As many belongs to tribal regions, they have traditionally been discriminated against and disadvantaged due to their ethnicity because of traditional discrimination. The plight of poor women is severely aggravated because they are forced to migrate to cities and foreign countries to supplement their meagre incomes, and a lot of them have to do this in order to survive.¹⁹

1.4. Challenges by Domestic Workers at Workplace

a) Castesim: Discriminatory casteist practices are imposed on domestic workers, and feudalism has endured for a long time. These include, but are not restricted to, requiring the use of separate dishes, no access to the Puja room, no access to restrooms, and many other humiliation. Caste exacerbates the predicament of domestic workers from marginalized and oppressed backgrounds. Dalit domestic workers are frequently hired to clean the house, while members of the employer's community are frequently hired to work as cooks. Domestic workers are not allowed to use the common areas and lifts in several gated communities and apartment complexes.²⁰ In 2017, voice was raised against discriminatory treatment by NGO in Bengaluru on use of lift by the domestic workers, the domestic workers often lag behind in raising voice against such treatment in lieu of losing employment.

¹⁹*Ibid.*

²⁰ Maitreyi Krishnan, "Being Domestic Workers in India: No Rights in the Face of Triple Oppression of Class, Caste and Gender" (All India Central Council for Trade Union, 2021) available at: <https://www.aicctu.org/index.php/workers-resistance/v1/workers-resistance-september-2021/being-domestic-workers%C2%A0-india-no-rights-face-triple-oppression-class-caste-and-gender> (last visited on May 29, 2024).

²¹ Aditya M L, "Inhuman rules bar maids from using elevators in apartments, (Indian News Express, 2016) available at: <https://www.newindianexpress.com/cities/bengaluru/2016/Jan/07/inhuman-rules-bar-maids-from-using-elevators-in-apartments-865768.html> (last visited on July 01, 2024).

The chairperson of then State Human Rights Commission said that domestic workers should raise their voice so that the matter can be brought forward.²¹

b) Abuse: Indian laws does not provide domestic workers even the most basic human rights put them at risk of abuse, torture, and forced labor. Over the previous year, a well-educated couple from Delhi was taken into custody on charges of allegedly abusing their 14-year-old domestic helper both physically and sexually. After five months of confinement authorities managed to rescue her. Police claimed that the injuries of girl were consistent with torture. It was reported by assistant police commissioner, "She was not given food and assaulted for no reason, and there were injuries on her face and feet."²² There are number of women domestic workers that deals with physical violence, mental abuse and sexual harassment at private household and due to their vulnerability they are unable to raise their voice. A survey conducted by Martha Foundation, clearly established that some of the women domestic workers take a hold of "sexual harassment at workplace". They lack necessary support and no quick and easy redressal mechanisms is there to deal with it.²³ Sexual harassment against women domestic workers is a nightmare. In *Vishaka v. State of Rajasthan*²⁴ the writ petition was filled for imposition for fundamental right of working women, the apex court of India issued guidelines in consonance with art. 14, 19 and 21 of the constitution for protection of women at workplace against sexual harassment.

"The Sexual Harassment of Women at Workplace Act", defines the term 'workplace' includes "a dwelling place or house"²⁵ and 'sexual harassment' includes any unwelcome acts or behavior. There is punishment provided under the law for those who does or attempt to abuse, harass the women at workplace. The Domestic Workers Act, 2008²⁶ sec.

²² Murali Krishnan, "India's Domestic Workers face abuse, exploitation" DW Aug. 08, 2023 available at: <https://www.dw.com/en/indias-domestic-workers-face-abuse-exploitation/a-64920455> (last visited on May 29, 2024).

²³ Martha Farrell Foundation, "Sexual Harassment of Domestic Workers at their Workplaces: An Ongoing Study on Part-time Domestic Workers in Gurgaon, Faridabad and South Delhi", available at: https://www.marthafarrellfoundation.org/uploads/pdf_files/1529667465_First%20report.pdf

²⁴ AIR 1997 SC 3011

²⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, sec 2(o).

²⁶ The Domestic Workers (Registration, Social Security and Workers) Act 2008, sec 23.

23 states that “any person harassing sexually any domestic worker or child, will be punished with imprisonment with not less than six months extendable up to 7 years or with fine of 50000 INR or both”.²⁷ Since there is lack of regulations for domestic workers they are left at the mercy of employers due to which they often face sexual or physical abuse without any recourse.²⁸

c) Lack of Personal Freedom and Inadequate Working Hours:

Both migrant and domestic workers work from sunrise to sunset without getting basic honorary pay for their work. Although “migrant and domestic workers” are entitled to form unions and join them, this right is not protected by “the Trade Unions Act” or the “Industrial Dispute Act” of 1947 because these laws do not consider migrant or domestic workers to be “workmen”. According to a 1977 Supreme Court decision, “isolated workers cannot constitute ‘organised labour’”.²⁹ Under “the Domestic Workers (Registration, Social Security and Welfare) Act, 2008”, domestic workers (males and females) living in the premises where the workplace is located have the right to a 10-hour rest period between finishing and resuming work every day. Moreover, domestic workers living in household are entitled 15 days of annual leave with wages.³⁰

d) Lack of Security Benefits: Domestic workers are those categories of vulnerable class those doesn't have any workplace benefits like medical insurance and leave and they often lack social security. One of the biggest challenge is that they lack economic benefits. Skill development is lacking in domestic workers.³¹ In cases of health issues, maternity issues like childbirth paralyzes the livelihood of domestic workers. Most women lose their jobs because lack of maternity benefits, leaving them with meager

incomes. They are typically regarded as belonging to the lower social classes.³² Combined with a high supply of workers, less wages for the domestic workers are the consequences of dearth of collective bargaining. Despite long hours, domestic workers tend to receive deplorable wages.³³

e) Lack of Child Care Facilities and Maternity Benefits Child domestic workers:

Majority of the domestic workers are female with many responsibilities, or one with childbearing or one experiencing pregnancy while being employed. In absence of employment contract pregnant women might be forced to quit their job or they face undue health risk either to themselves or to their child. The ILO has set standards for maternity protection of domestic women workers. It explicitly recognises that those working for wages in private households require protection during pregnancy, nursing period and maternity, most importantly it applies to all employed women inclusive of all forms of dependent workers.³⁴ Despite of these legal commitments to maternity protections numerous challenges to extending these measures to all domestic workers remains the same. Maternity leave is the key to placing women at par with men in labour market. Right to maternity leave is human right of women that has been affirmed repeatedly universally. Yet. It remains a major lacuna in domestic workplace. Around 15.6 million domestic women workers, globally are not legally entitled to maternity leave, while others workers get benefit of this right.³⁵ Additionally, many domestic workers are children under 18 years as well, some as young as five years old. The Convention estimates “that more girls under sixteen work in domestic service than in any other category of child labour.”³⁶ To give it a clear picture most of the Indian households are occupied with girls below 18 years as a domestic worker. Child

²⁷ WageIndicator, “Domestic Work in India” *Paycheck.in* 2024, available at: <https://paycheck.in/labour-law-india/domestic-work-in-india> (last visited on June 01, 2024).

²⁸ Rights for Domestic Workers, UNITED NATIONS IN INDIA, <http://in.one.un.org/page/rights-for-domestic-workers> (last visited May 1, 2017); Kamala Sankaran, Domestic Worker and Fish Worker Consultation Bangalore, WIEGO Law Pilot Project (Aug. 23, 2008), <http://wiego.org/sites/wiego>.

²⁹ Bangalore Water Supply & Sewage Board v. Rajappa, (1978) 2 SCC 213.

³⁰ The Domestic Workers (Registration, Social Security and Welfare) Act, 2008, s. 22.

³¹ Director General Labour Welfare, Final Report of the Task force (Ministry of Labour and Employment).

³² Utkarsh Agarwal and Shailja Agarwal, “Social Security for Domestic Workers in India” *Socio-Legal Review Manupatra* 2018, available

at: <http://docs.manupatra.in/newsline/articles/Upload/33C4D30A-4721-4464-9DF2-5DFA4A769B80.pdf> (last visited on July 3, 2024).

³³ N. Neetha and Rajni Palriwala, “The Absence of State Law: Domestic Workers in India”, 23(1) *CAN. J. WOMEN* (2011).

³⁴ The Maternity Protection Convention 1952 (No.103) art 1.3 (h) and The Maternity Protection Convention 2000 (No.183) art. 2.1.

³⁵ Policy brief on Domestic Work, “Meeting the needs of my family too, maternity protection and work-family measures for domestic workers” (Policy Biref no.6), *International Labour Organization*. available at: <https://www.ilo.org/publications/meeting-needs-my-family-too-maternity-protection-and-work-family-measures> (last visited on July 04, 2024).

³⁶ Human Rights Watch, “Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East,” (April 2010) 9, 14.

domestic workers are vulnerable to sexual harassment and abuse in the household notoriously girls. However, since they are frequently denied an education, they are limited from the availability of other work as they become adults, and the abuse persists.

It is evident that domestic workers face challenges that fall under one or more of the above mentioned categories. In addition to these issues, welfare associations and placement agencies play a significant role in aggravating them. In many cases, they lead domestic workers to greater economic exploitation by paying them less. Many times they are involved in crimes like domestic worker abuse and human trafficking.³⁷ In absence of domestic workers union it increases the exploitation of the domestic workers.

1.5. Human Rights - Domestic Workers

The Indian culture of domestic work usually underpays, mistreats, overburden the domestic workers with work. The Corona Virus Disease- 2019 (COVID-19) pandemic victimized numerous part-timers workers as they lost their work and some lived-in domestic workers suffered abuse from employers. In 1959, the Domestic Worker (Conditions of Service) Bill and in 2004, Housemaids and Domestic Workers (Conditions of Service and Welfare) Bill were the first attempts by legislature to regulate domestic workers' services. This act required domestic workers to register under it along with other provisions, but these laws never took effect. Besides these laws, there are other legislations that need to be amended so that domestic workers can benefit from them. The "Minimum Wages Act of 1948" contains a number of provisions that address particular issues, such as the regulation of domestic worker wages. But not every state has yet added domestic workers to the schedule. The pay that should be given to domestic workers varies greatly. Sometimes even the minimum wage is not paid to domestic workers.³⁸ In 2016, "the Labour Ministry" extended the state insurance scheme to domestic workers in Delhi and Hyderabad. As a part of pilot scheme, only limited medical benefits were provided to domestic workers, leaving maternity benefits outside their reach.³⁹ To a certain extent, only two laws view maids as workers. The Unorganized Workers' Social

Security Act of 2008 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act of 2013 are these laws. The first law provides social welfare to working women, whereas the second provides protection to all working women. It is to be noted that neither law recognizes the rights of domestic workers. Most states have included domestic work to their list of scheduled jobs, but implementation is still problematic. This leaves domestic workers vulnerable to exploitation and abuse owing to their exclusion from labour laws. It is essential to address this area in order to fully protect working women.⁴⁰

The predicament faced by domestic workers has been taken cognizance by the judiciary to protect their rights. The plight of domestic workers and home nurses were highlighted during COVID-19 pandemic wherein the DMC, a trust has moved before the Delhi High Court seeking the state government to constitute a welfare board for them as well as commission of committee to understand their situation.⁴¹ A number of major legislations in India exclude domestic workers, including the "Child Labour Act 1986", "the Sexual Harassment of Women at Workplace Act 2013", and "the Minimum Wages Act 1948", as well as "the Unorganized Workers Social Security Act 2008". Domestic workers were declared eligible for decent work environments in 2011 by the ILO Convention 189. In spite of 25 countries ratifying this convention till date, India is yet to ratify it due to lack of coverage of all the convention 189 principles within the Indian legislation. Therefore, advocacy continues to focus on ratifying convention 189, adopting a National Policy for domestic workers, and establishing a comprehensive national legislation. The Supreme Court heard a Public Interest Litigation (PIL) regarding comprehensive protections for domestic workers in India in "National Domestic Workers Welfare Trust v. Union of India".⁴² Furthermore, in 2012 PIL was filed for implementation of guaranteed schemes and benefit for domestic workers under the "Unorganized Workers Social Security Act 2008" in Jharkhand.⁴³

Not only India sends domestic workers in "Middle East and Asia," it receives domestic workers from neighboring countries of Bangladesh, Sri Lanka, and Nepal. This migration in and out means that this is giving rise to issues like trafficking of young women

³⁷ *Supra* Utkarsh Agarwal

³⁸ Nimushakavi Vasanthi, "Addressing Paid Domestic Work: A Public Policy Concern", 46(43) ECON.

³⁹ *Ibid.*

⁴⁰ Murali Krishnan, "India's Domestic Workers face abuse, exploitation" DW Aug. 08, 2023 available at: <https://www.dw.com/en/indias-domestic-workers-face-abuse-exploitation/a-64920455> (last visited on May 29, 2024).

⁴¹ Disaster Management Collective (DMC) v. Union of India & Anr, *LiveLaw* July 04 2022, available at: <https://www.livelaw.in/news-updates/delhi-high-court-welfare-board-home-nurses-domestic-workers-202928> (last visited July 05, 2024).

⁴² PIL No. 160/2003

⁴³ National Domestic Workers Welfare v. State of Jharkhand & Ors, Nov. 20th, 2014 (W.P. (PIL) No. 7032 of 2012).

and girls.⁴⁴ Though domestic work is banned in India under “the Child Labour (Prohibition and Regulation) Amendment Act 2006”, but the practice remains widespread.

The Constitution of India protects the rights of vulnerable sections of society under arts. 14, 15, 17, 21, 23 and 24. It is observed by Supreme Court in number of cases⁴⁵ that “it is fundamental right of every individual to live with human dignity and free from exploitation”. The Constitution of India not only protects the fundamental rights of domestic workers it endeavors to secure the suitable living conditions, living wage for workers and it directs the state to protect the rights to work by developing suitable legislations for employees/employers working in industrial, agricultural, or otherwise.⁴⁶ Furthermore, the Directive Principles of State Policy (DPSP) bring forth the minimum requirement to endure a dignified life under art. 39 clauses (e) and (f), art. 41 and art. 42 directing the state to adopt measures to protect the health and strength of workers including men, women, just and humane conditions of work and for maternity relief.⁴⁷ Additionally, the DPSP also secures:-

- a) equal right to every citizen, an adequate means of livelihood⁴⁸,
- b) Undeviated the state shall make policy towards securing and distributing the material resources of the community in best possible manner to subserve the common good,⁴⁹
- c) State shall make policy or framework determining equal pay for equal work without any discrimination based on gender,⁵⁰
- d) To protect the health, strength and reliability of workers comprising both males and females. It further lays duty on state for securing that at the tender age of children they are not abused. Additionally, the citizens are not forced by economic need to enter avocations unsuited to their age or strength.⁵¹

⁴⁴ YouthKiAwaaz, ‘Status of Domestic Helpers in India’ (6 January 2010) available from <http://www.youthkiawaaz.com/2010/01/status-of-domestic-helpers-in-india/> viewed on July 5, 2024.

⁴⁵ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802

⁴⁶ The Constitution of India 1950, art. 43.

⁴⁷ *Ibid.*, art. 42

⁴⁸ *Ibid.*, art. 39 (a).

⁴⁹ *Ibid.*, art. 39 (b).

⁵⁰ *Ibid.* art 39 (d)

⁵¹ *Ibid.* art 39 (e)

⁵² *Ibid.* art 39 (f)

⁵³ International Labour Organisation, C189-Domestic Workers Convention, 2011. (United Nations Agency) art.5

e) It is the primary duty of the state to protect the educational rights of children and to secure that proper facilities are provided to them to develop in a healthy manner with almost dignity and freedom, It further ensures that childhood and youth are protected against exploitation and moral abandonment.⁵²

Domestic and migrant workers are under the umbrella of human rights protection, yet their rights are marginalized sections of society. Particularly, women are vulnerable to exploitation, abuse, threats of deportation, language barriers, discriminatory labour laws, and predatory recruitment agencies. Here are some domestic workers rights which allow them to realize their fundamental human rights.

- a) Protection against all forms of abuse, violence and harassment.⁵³
- b) Right against discrimination, forced and compulsory labour.⁵⁴
- c) Right to decent, safe and healthy working environment.⁵⁵
- d) Right to organize, collectively bargain, to form and join unions and freedom to choose one’s own representative.
- e) Effective abolition of child labour⁵⁶
- f) Right to fair wages and minimum wage.⁵⁷
- g) Right to reasonable working hours without discrimination based on sex.⁵⁸
- h) Right to legal aid, access to courts and tribunals.⁵⁹

As a human right that is intrinsic to all, there is need to design and implement a social protection according to the “Universal Declaration of Human right (UDHR)” the principles of equality, non-discrimination⁶⁰ and social inclusion underlying the particular need to include the person in informal economy.⁶¹

Human Rights Watch has reported number of stances shouting out loud the human rights violation of domestic workers. “She beat me until my whole body burned. She beat me almost every day... She

⁵⁴ *Ibid.*, art.3

⁵⁵ *Ibid.*, art. 13(1)

⁵⁶ *Ibid.*, art. 3

⁵⁷ *Ibid.*, art.11

⁵⁸ *Ibid.*, art.10

⁵⁹ Ministry of Labour and Employment, “National Policy for Domestic Workers”, (Government of India, Feb. 13, 2019) available at: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1564261> (last visited July 05, 2024).

⁶⁰ UDHR, art. 2

⁶¹ International Labour Organisation, “R202-Social Protection Floors Recommendation”, 2012 (United Nations Agency).

would beat my head against the stove until it was swollen. She threw a knife at me but I dodged it. I had a big black bruise on my arm where she had beaten my arm with a cooking spoon, she beat me until the spoon broke into two pieces. This behavior began from the first week I arrived. ... She never paid me for 10 months. I thought if I don't escape, I will die." – "Wati S., migrant domestic worker in Saudi Arabia, 2006".⁶² This shows psychological and mental abuse of domestic workers.

If we go by the numbers most countries data on domestic workers profile is unavailable. But it is

largely estimated that millions of girls and women around the world are employed as domestic workers and Indonesia alone has 1.5 million of domestic workers. In countries like Argentina, Brazil, Costa Rica, Belize, Ethiopia, Uruguay and South Africa comprises of 5-9 percent of all employment.⁶³ Most countries in the world have specific legislation for the right of domestic workers, although the status of domestic workers globally is presented in figure 1 below.

	Developed Countries	Latin America and Caribbean	East Europe	Asia	Africa	Middle East
Covered by National Labour Legislation	Yes	Yes	Yes	Partial	Partial	Yes
Minimum Wages	Yes	Yes	Yes	No, domestic workers are excluded from minimum wages	Yes	No, domestic workers are excluded from minimum wages
Maternity Leave	Partial	Yes	Partial	Partial	Yes	No
Limitations of normal weekly hours	Yes	Yes	Partial	No	Partial	No
Annual Leave	Yes	Yes	Partial	No	Partial	No

(Figure1- Status of Domestic Workers Globally, Source: Doemploy)⁶⁴

1.6. Psychological Consequences of Exploitation of domestic Workers.

Household labor, which may include part of the "mental load" of home management, can be draining and psychologically affecting⁶⁵

Stress and Anxiety Disorders-Constant uncertainty regarding job security, financial instability, and abusive work environments contribute to chronic

stress and anxiety. Workers often experience emotional exhaustion and burnout due to excessive workloads and mistreatment.

Depression and Learned Helplessness-Continuous subjugation, exploitation, and lack of escape from abusive work environments lead many domestic workers to develop depressive symptoms.

⁶² Human Rights Watch, "Decent Work for Domestic Workers: the Case for Global Labor Standards" available at:

https://www.hrw.org/sites/default/files/related_material/HRW_ILO_brochure_lores.pdf (last visited on July 05, 2024).

⁶³ *ibid.*

⁶⁴ DoEmploy, "Domestic workers rights in different countries" (March 30, 2021) available at:

<https://doemploy.app/blog/domestic-workers-rights-in-different-countries> (last visited on July 06, 2024).

⁶⁵ Cognitive household labor: gender disparities and consequences for maternal mental health and wellbeing

<https://pmc.ncbi.nlm.nih.gov/articles/PMC11761833/> (last visited, April 2025)

Post-Traumatic Stress Disorder (PTSD)-Workers subjected to physical and sexual abuse often experience PTSD, characterized by flashbacks, nightmares, hyper-vigilance, and emotional detachment.

Low Self-Esteem and Identity Crisis-Due to their social status and continuous mistreatment, many domestic workers struggle with feelings of worthlessness and low self-esteem. They internalize societal prejudices, which hinder their ability to seek better opportunities or demand fair treatment.

1.7. Conclusion

A human rights-based approach calls for the state to prioritize individuals who are socially marginalized and disadvantaged. This involves ensuring equal treatment without discrimination and implementing protective measures that enable domestic workers to exercise their rights with dignity and fairness. Affirmative action and structural framework is dire need of an hour to diminish or eliminate the perpetual discrimination or conditions encountering stigmas and prejudices. It also highlights the urgent need to engage with state authorities, employment agencies, and district administrations to encourage them to take action and fulfill their duties. An affordable quality service care should be developed by the state governments and non-government organizations in rural and sub-rural areas for the growing need of domestic workers. Lastly, most importantly government should set up legislative framework as well as create an environment for protection of the domestic workers.