

## Access To Justice : An Illusion For Domestic Workers

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### Introduction

Large numbers of women are employed as Domestic workers, who form an integral part of Unorganized Sector, however they face lack of recognition as a distinct form of occupation by the State. They are the backbone of service sector of Indian economy and they have a Multiplier impact on the economy as they enable the women in particular to work by sharing the family burden, which becomes necessary taking into account the conservative nature of Indian Society which places the main burden of Housekeeping on the Females. Hence, women dominate this sector due to gender notions which culturally conditions them as domestic caregivers fitting well with these occupations.<sup>2</sup>

Since recognition from the State is a pre requisite to be governed, regulated and protected by labour rights, Domestic workers virtually face no such recognition except from The Unorganized Workers' Social Security Act, 2008, (UWSSA), which is a scheme for the welfare of the unorganized sector workers and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which deals sexual harassment at workplace which includes the private household in the sphere. Domestic work is not covered under the Workmen Compensation Act, 1923; the Payment of Wages Act, 1936; Maternity Benefit Act, 1961; Payment of Wages Act, 1936; or the Contract Labour (Regulation and Abolition) Act of 1970. Domestic labour is also excluded from the central list of scheduled employments under the Minimum Wages Act, 1948.

Thus they are denied the most essential Labour Rights recognized by the Government and International Labour Organisation, those are right to collective bargaining, equal remuneration, minimum wages protection from

forced or compulsory labour and discrimination in respect of employment and occupation, maternity benefits, employment security and occupational safety and health and a fixed working time.<sup>3</sup> Moreover, domestic workers fare worse than other labour intensive based occupation in terms of their wages.

### Right to Legal Aid

Legal Aid is defined under Section 2(1) (c) of the Legal Service Authorities Act, 1987. It aims to provide free and competent legal access to the weaker section of the society for equal access to justice for those who were denied earlier due to their social, cultural or economic barrier.<sup>4</sup>

Economic inequality is the biggest barrier to access to Justice, as economic inequality leads to social inequality, which in turns lead to literacy and lack of political awareness of legal rights. The same can be said vice-versa. Thus leading to a vicious cycle. A similar situation can be seen in domestic workers who are being crushed under the wheel of Justice, which they are never able to access.

### Legal Aid and Domestic Workers

The author has emphasised on Legal Services Authorities for the reason that Legal Services Authorities (LSAs) are critical justice providers and they are essential for the successful implementation of the Act.<sup>5</sup>

The LSAs regularly hold Lok Adalat including Lok adalats for high courts for speedier and cheaper redressal of justice. This is important taking into account that domestic workers want speedy and speed justice so that work time which otherwise would have been consumed in the litigation state does not get affected and they can continue to earn or search for alternate livelihood opportunities. Also there are certain issues which can be resolved in the pre litigation

stage such as nonpayment of dues.

LSAs also run mobile legal services unit, which arranges legal literacy camps and Lok adalat in remote and inaccessible areas to provide justice at the doorstep, thus meeting the need of domestic workers. LSAs undertake legal awareness and training which also laws relating to exploitation of women and children and labour rights, which can directly and indirectly strengthen the awareness of domestic workers.<sup>6</sup>

### **Challenges faced by LSAs**

The author in the subsequent paragraphs has focused on different in the different situations though which the domestic workers are exploited and the challenges faced by the LSAs in dealing with them.

#### **1) Trafficking of Domestic Workers**

Economically and socially backward states like Jharkhand which are facing agrarian crisis, lack of infrastructural development among others are fueling the demand for cheap domestic workers in urban areas, resulting in rampant trafficking.<sup>7</sup> This demand is increasing as women are stepping out of the traditional as care takers and moving the corporate ladder, thus their roles are being substituted by these domestic workers. Immoral Traffic (Prevention) Act, 1956<sup>8</sup> which prohibited trafficking and Article 23 of the Indian Constitution<sup>9</sup> prohibits the act of trafficking in human and gives this Fundamental rights to all citizens of India, but unfortunately, either the Central or state government has no specific regulations or schemes to deal with trafficking of women and children as domestic workers. There exist no schemes for tracking and identification of the victims and further, no framework for their rehabilitation once they have been rescued.

The transit point between the trafficker and the client, in majority of the cases is the Placement Agencies. The traffickers work under the disguise of the placement agencies, and according to the price they receive, they supply

the victims accordingly.

The biggest hurdle faced by the authorities and social organisation on maintaining a check on the placement agencies is lack of central and state legislation or regulation for the same. This means that these agencies go unregulated and their activities do not come under the purview of the government for regular checks for trafficking victims. Thus, for a victim to approach the court of law and access the rights to legal aid first have to be rescued and rehabilitated which does not seem plausible due to the above problem. When these placement agencies cannot be identified they easily change their business location and thus the authorities find it difficult to close them and bring the perpetrators in the justice system.<sup>10</sup>

Right to legal aid covers the above domestic workers who are victims of trafficking, member of schedule tribe (Many of the states with high incidences of Trafficking or have schedule tribes with most disadvantaged group in terms of poverty etc.) or just women and children as per criteria of free legal aid beneficiary under the Legal Service Authority Act, 1987. Thus, they can approach the court of law as victims of trafficking, disadvantaged group sexual exploitation or child labour but their hardships they face as domestic workers and the denial basic labour rights goes underreported. Thus necessitating the need for specific provision for domestic workers.

#### **2) Abuses faced by Domestic Workers**

Domestic workers are faced with different types of abuses in day to day life such as verbal abuse among others. Verbal abuse is a form of psychological abuse, which undermine the worth and work of the domestic workers for the smooth functioning of household.<sup>11</sup> This type of abuse also lead to the feeling of humiliation and powerlessness, but unfortunately, this type of abuse is generally treated as trivial by the police and legal aid officials in front of more

pressing issues such as sexual harassment among others. Also the lax attitude of the police and law officers, make them shun the legal process. Thus, highlighting the need for sensitisation of the legal aid officers.

Abuses faced by them are further exacerbated by the issue of Registration of Domestic Workers. No other worker in the field of unorganized sector is required to register with the police except Domestic Workers. The police depict them as security threats, giving them an element of criminalization based on their occupation, thus dehumanizing them further.<sup>12</sup>

### **3) Caste and Religion based Discrimination faced by Domestic Workers**

The caste of domestic worker also becomes the source of discrimination faced the worker. Due to historical inequalities existing in the form of the rigid caste system which led to in-equal status in sphere of social, economic and education, has led to disproportionate number of people of domestic workers belonging to Schedule Caste, schedule caste and other backwards caste. The general caste only consists of a small percentage. The age old diabolic act of caste discrimination still persists in the society which has become institutionalized in the domestic work sphere.<sup>13</sup>

Domestic workers belonging to minority religion such as Muslim etc. face a different kind of discrimination that of being tagged as 'illegal migrant workers from Bangladesh' or 'Pakistani' despite being Indian nationals and having required documents to prove the same. These kinds of cases present a difficult to legal aid workers, as the caste and religious based discrimination takes place in a private household and not an organised work place, where such discrimination can be easily documented and remedied. Furthermore, at times, the lawyers hired by legal services authorities have their own prejudices against these marginalised group of people, which may affect the complaint bought

fought by the aggrieved workers.

### **4) New form of Bonded Labour**

Live in domestic workers are being provided with three times meal, basic amenities and place to live in and in return they are provided with a marginal remuneration which disables to join to search for other opportunities as they would not able to afford transportation and living costs for the time they search for better opportunities, thus they are trapped by their employers. Further, this also results in their alienation, as they cannot afford to go their home town and they are able to make minimal human relationship outside of the household due to the restriction placed by their employers.<sup>14</sup> This sort of situation provides a dilemma to the legal aid works. Firstly, they are reluctant to approach the authorities due to fear of lack of financial resources and alternative livelihood. Secondly, this form of bonded labour is not yet recognized by the government or Supreme Court, and thus they are no provisions dealing with such situations. Thirdly, due to lack of sensitisation among legal aid officials and death of labour rights recognized for the domestic workers, legal aid officials discourage the workers who approach them for redressal.

### **5) Child Domestic Labour**

The recent amendment to the Child Labour Act, 1986 which culminated into the Child Labour (Prohibition and Regulation) Amendment Act, 2016 has resulted in loopholes for child domestic workers.<sup>15</sup> The biggest loophole is the reducing the liability for the parents. In case of violation by the parents by allowing their children, then they shall not be held liable, only the employers shall be held liable. This problematic for the reason, in most cases parents are willing to allow their children to work as domestic worker due to the prospect of extra income and less responsibility towards the child in terms of meals and living costs. Further, the amendment fails to address the issue of child domestic workers in the whole

act adequately. There are no provisions for child domestic workers. Children are eligible for the free services of the legal services authorities, but the biggest issue that will arise out here is that children due to their vulnerable age and the influence of the employer and parents will never be able to approach the court, thus highlighting the importance for legal awareness among parents primarily on child laws.

### **Reforms needed in Legal Aid System**

Thus the author shall present two solutions for the above mentioned problems, that are a central legislation for the rights of the domestic workers and active participation from the civil society through the training of Para legal volunteers.

#### **A) Reforms in Legislation**

In order to approach the court of law for redressal, one of the most basic pre requisite is having a right for which the person seeks redressal, if the individual does not have the right then legal aid is futile in the case. This is the same predicament being faced by domestic workers in India.

Thus, there is a need for comprehensive law specifically dealing with Rights of Domestic Workers, regulation of the working conditions, registration of the domestic workers, establishment and functioning of boards dealing with their issues. For the same there is a need to involve civil societies, organizations and trade unions in order to draft a comprehensive law for the rights of Domestic Workers in India.

International Organizations such as United Nation and International Labour Organisation have drafted legal instruments such as treaties or convention specifically dealing with rights of domestic workers. Unfortunately, such instruments have not been ratified by India.

#### **B) Role of Para- Legal Volunteers**

The author would highlight the importance of Para-legal volunteers, trained from the pool of domestic workers. The biggest advantage of

PLVs is that they belong to the same community of domestic workers, thus there is a human connection which helps in connecting the aggrieved victim to the justice system, with the PLVs as the intermediately more effectively in local languages. They can also disseminate legal awareness among domestic workers more effectively and go to remote and inaccessible part of their area. They can also work as informants for the police and LSAs by informing them about issues affecting Domestic Workers. PLVs also help in making Domestic Workers aware of the benefits of inexpensive settlement of disputes relating to wages among others. Thus, PLVs not only help in making domestic helpers aware of their rights but also help them in accessing instrument for the implementation of their right which includes right to legal aid.

### **Conclusion**

Thus, in conclusion the researcher would underscore the importance reforms in Right to Legal Aid for domestic workers, as these are the most marginalised section of workers in terms of their economic and social status in the society. Thus, reforms in right to legal aid helps in accessing justice which otherwise was denied to them.

### **(Endnotes)**

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- 2 *ILO in Action: Domestic Workers*, International Labour Organisation, available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_protect/@protrav/@travail/documents/publication/wcms\\_214499.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_214499.pdf), last seen on 20/06/2018.
- 3 *Achieving decent work for domestic workers*, International Labour Organisation, available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/publication/wcms\\_181344.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_181344.pdf), last seen on 21/06/2018.
- 4 Dr. G. Mallikarjun, *Legal Aid in India and The Judicial Contribution*, 7 NALSAR LAW REVIEW 234,237 (2013).
- 5 *Ibid.* at 238.
- 6 *Evolution, Growth and Development of Legal Aid System*

- in India*, Shodhganga, available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/12650/9/09\\_chapter%205.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/12650/9/09_chapter%205.pdf), last seen on 24/06/2018.
- 7 *Jharkhand Passes the Private Placement Agencies and Domestic Workers (Regulation) Act*, National Legal Research Desk, available at <https://nlrd.org/jharkhand-passes-the-private-placement-agencies-and-domestic-workers-regulation-act/>, last seen on 19/06/2018.
  - 8 S. 14, Immoral Traffic (Prevention) Act, 1956.
  - 9 Art. 23, the Constitution of India.
  - 10 *How to Prevent Human Trafficking for Domestic Servitude*, Organisation for Security and Cooperation in Europe, available at <https://www.osce.org/handbook/domesticservitude?download=true>, last seen on 25/06/2018
  - 11 *India's Domestic Workers Face Abuse without Legal Protection*, Murali Krishnan, available at <https://www.dw.com/en/indias-domestic-workers-face-abuse-without-legal-protection/a-41169648> , last seen on 27/06/2018.
  - 12 *It's not help, it's work*, The Hindu, available at <https://www.thehindu.com/opinion/op-ed/its-not-help-its-work/article19273135.ece>, last seen on 24/06/2018.
  - 13 *Caste and Religion Discrimination in Urban Cities*, The Times of India, available at <https://timesofindia.indiatimes.com/india/why-reshmi-has-to-become-rashmi/articleshow/60713667.cms>, last seen on 26/06/2018.
  - 14 Mariam Seedat-Khan, *A New Form of Bonded Labour*, 4 Journal of Sociology and Social Anthropology, 31, 40 (2014).
  - 15 *A Law That Allows Child Labour*, The Hindu, available at <https://www.thehindu.com/opinion/columns/A-law-that-allows-child-labour/article14560563.ece>, last seen on 22/06/2018.