DECODING THE STATUS OF DOMESTIC WORKERS UNDER LABOUR LAW PROTECTIVE MECHANISM IN INDIA AND ILO FRAMEWORK.

Mr Avinash Bhagwan Awaghade
Faculty of Law, ABBS SCHOOL OF LAW, Bengaluru, Karnataka

ABSTRACT
Domestic workers may engage their labour in doing of wide range of domestic task which may include cooking, cleaning, general household work, taking care of child and elderly persons. It is vulnerable and marginalized group or class of workers who serve to the economically sound society. These so called workers are excluded from the ambit of labour welfare and protective mechanism in India.

The abuse and exploitation of domestic workers remains extensive due to the lack of legal protective mechanism to protect the worker in this non-industrial-sector. Domestic workers are not considered industrial labour force. This approach flow from the idea that the home is not and cannot be a work place or home is not industry.

International Labour Organization (ILO) adopted Convention, which is known as the Domestic Workers Convention, 2011. Convention No. 189 and Recommendation No. 201 Concerning decent work for domestic workers, 2011.

This paper will analyse the status of domestic worker under the realm of labour and Industrial Jurisprudence. In the scenario of globalization, this paper will analyse the key policies of labour welfare in India and International level with reference to domestic workers.

Keyword: Domestic worker, worker, Industry, Constitution, Globalization

1. INTRODUCTION
Domestic work typically known as unpaid labour and traditionally performed by women in their life. They do not work outdoor but work behind closed-door. It is not valued in term of money and recognized as exchangeable work. The worker employed in this sector is undervalued. It has perceived as something other than regular employment and not fitting in the general frame work of existing labour laws.

Domestic work denotes the means and includes the work performed in and for a household, under employment relation. It include housework, food preparation, washing, taking care of children, elderly or sick members of a family, household pets, garden cleaning, securing the house and driving car for the family. It has been referred to as unpaid work, care work and non-industrial work. Domestic workers may be employed for full- or part-time. Sometime domestic worker asked to stay with employers’ residence. The labour force of domestic worker primarily includes migrant or marginalized group of the society. However the notable fact of this sector, is that it’s master and servant relation. It is very hard and challenging task to understand master and servant relationship, employable terms, monetary compensation in term of salary. The domestic employment relations are not focused in beneficiary labour legislations, thus it render the situation wherein domestic workers forced to work in unsecure, unfair condition and subjected to victim of denial of basic human and labour rights. Domestic work is most important occupation where large number of women and children are engaged in the world. If we understand the nature of work, work condition and situation where they work having background of social phenomena. This occupation have global history and background of system of slavery. In existing society, working at home, taking care of child, managing household work are not recognized as productive and economically compensated work.
Domestic work activity does not take place at a place like Industry, factory, establishment, office or shop, but it happens at home. In this sector majority bread winner of family are women. The remarkable inclusion of women in the non-industrial labour force, attracted the attention of state at national and international level. In arena of globalization, privatisation and liberalization policy maker concentrated their attention to secure and promote the labour rights but unattended the new form of labour force that is domestic workers. Today, domestic workers has counted as large portion of labour in developing countries. The escalation of work, lack of inadequacy of policy measures and increasing number of domestic workers are now compelled state to take cognizance of human rights, labour rights of this group. In industrialized world, Domestic work is now well established and important type of livelihood work. Domestic service remains an extremely personalized and informal work service delivered in the homes of employers. In domestic works sector generally employer is assumed to be a woman and employee also to be a woman. Here traditional approach and paradigm that the “domestic” province is typically their responsibility, regardless of the fact who is actually pays for the work. In the absence of beneficiary labour enactment the domestic workers remain dependent on their employers’ will and desire. The sense of fairness, employable terms and condition are solely depend on individual contract rather than on a recognised legal norms. Domestic workers are not sheltered under existing labour laws, customary view behind this is the domestic worker are not treated as employee or worker, they are treated as domestic servants without human rights and labour rights.

2. THE OBJECTIVES OF PAPER

The theme of paper is to made available the answers through methodological inquiry, systematic investigation in existing labour laws and to discover the legal status of domestic workers, which has unseen and not yet been exposed. Therefore, for present research paper theme it has been definite aims and objectives are as follow.

- To analyse legal status of domestic workers under the labour law protective mechanism in India and ILO framework.

- To categorize the weaknesses and pitfalls of present acts and policies with to expose concerns about domestic workers rights and status as worker.

3. RESEARCH PROBLEM

Domestic Workers in India are repeatedly treated as contract labour or bonded labour. In the absence of protective shield of labour laws, they have not being treated as worker or employee. Therefore they are excluded from the ambit of workers’ rights as provided in labour laws. The right to workers’ compensation, weekly rest day i.e. holidays and minimum wages. Domestic workers fall within the category of unorganized labour. Illiterate women and children are 90% part of the domestic workforce. India, being the founding member of International labour organization failed to ratify convention concerning decent work for domestic workers, 2011. However there are certain labour law provisions generally provide some sort of protection and limited rights to the domestic worker in India.

4. RESEARCH QUESTIONS

- Whether the existing labour law protective mechanism are enough to provide comprehensive protection to domestic workers in India?
- Whether domestic work and worker have distinct nature than industrial worker?

4.1. Decoding the status domestic workers under Indian labour laws: Who is domestic workers?

Legal sense of term domestic workers can be drawn from some International Instrument especially from Convention No. 189. It has been defined domestic worker as “any person engaged in domestic work within an employment relationship.” Domestic work is defined as “work performed in or for a household or households.”

The very purpose of convention -189 as rightly pointed out by the Mr Guy Ryder Director-General, Brazil state that,

“The objective of Convention No. 189 is to improve living and working conditions for the millions of domestic workers throughout the
world, guaranteeing them a decent job that provides them with protections equivalent to those enjoyed by other workers. Domestic workers are among the most precarious and the most poorly remunerated workers. Moreover, they frequently work in conditions of informality in which they are deprived of basic rights, such as limits on the length of the work day, the right to rest periods, a minimum wage that enables them to meet their basic needs, and access to social protection, including maternity protection. Brazil’s decision to ratify Convention No. 189 confirms its will to extend basic rights to all workers and strengthen the measures already taken at national level”.

In International definition of domestic worker, there are two approach while recognizing them as labour force first the industry-based approach which has focused on one basic characteristic of employment relationship wherein in employment. It create relation of master and servant which is common characteristics to of all domestic works. They are employee or worker namely because of being employed or served in or by a private household i.e. home or households. In this sense they are employee of their master some time it might be distinguished with employee.

Another approach toward domestic worker employment relation wherein domestic worker has been defined as In-employment. The person who providing domestic services and has been paid in cash or in other form. There is as such no difference between domestic workers who is In-employment or not. This approach cannot be used for identifying the relation of employment. The house holder- approach is used in understanding the employment relation of domestic worker who live in with his employer house. In this approach worker used to hold the house and perform the work assigned to him. In this approach it would be difficult to know whether domestic worker should be considered as house member or the servant.

The industrial based approach would be more suitable to identify the status of domestic worker on the basis of their employment term rather than identifying domestic workers on the basis of their occupation.

The Discrimination (Employment and Occupation) Convention, 1958 and the Equal Remuneration Convention, 1951 also applies to domestic workers. It broadly applicable to the all type of workers and labour without any discrimination on the basis of employment, nature of employment, employment terms.

In India, Domestic workers continued to be omitted from the ambit of definition of worker or employee. If we analyses the scope and boundaries of the definition provided in various law, it has excluded the domestic worker from the preview of the term worker, employee. The very reason behind this exclusion is that the policy maker has failed to consider epistemology of the nature of domestic work and worker. Our policy maker believe that the employment relation, term of employment, and factor of determination of labour wage are quite different from domestic work. The important fact about the employment relation has been not addressed in the employment laws. The approach behind this having back history of exploitation theory by distinguishing them by tactics, it is the common practice to denial of status as ‘workers’. The Child Labour (Prohibition and Regulation) Act, 1986, somehow protect the interest of child as domestic worker.

The statutory definition of domestic worker provided under Domestic workers Welfare and Social Security Act 2010 which says that, Domestic worker means , “a person who is employed for remuneration whether in cash or kind , in any house hold ‘or similar establishments’ through any agency or directly, either on a temporary or contract basis or permanent, part time or full time to do the household or allied work and includes a “Replacement worker” who is working as a replacement for the main workers for a short and specific period of time as agreed with the main worker; The household and allied work includes but is not limited to activities such as cooking or a part of it, washing clothes or utensils, cleaning or dusting of the house, driving , caring/nursing of the children/sick/old/mentally challenged or disabled persons.”

The basic drawback of this definition is that said definition have excluded the worker employed to do similar work in office, industry. It also does not specifically exclude child labour employed in domestic work.

The purpose behind enactment of central legislation is to secure the interest of domestic worker. Placement agencies and so called service
provider have exploited women, child and subjected to human trafficking. There was no such regulation which provide them standard guideline. The issue of human trafficking, sexual harassment, abuses and atrocities of physical, mental assault have been increased in last few decades. In an absence of any special legal protection, has led to severe exploitation women and children. Recently few State Govt. have taken proactive steps by giving protection of The Minimum Wages Act-1948. Placement agencies/employer should be guided by principles of labour laws in line constitutional principles of social justice, social security.

4.2. Is Home considered as workplace/Industry/establishment?

This is major issue involved in determination of employer and employee relation when labour does his or her work in place other than industrial establishment, factory, and industry. In case of domestic worker he or she supposed to work in place where house hold work generally performed. Domestic workers are clearly included in the Unorganized Workers (Social Security) Act, 2008. Sometime under the employment term, the employee has to do or produce some goods or render services in that case home can be considered as workplace. Therefore such labour can be employee or worker because he or she has performed work under the master and servant relation or employer and employee relation. Term “home-based worker” used in Unorganized Workers (Social Security) Act, 2008 includes labour work performed in home and the person engaged in production of good or rendering service for employer in his or her home or at any place, for remuneration.

According to, a Delhi Establishment Act establishment means a shop, commercial establishment and hotel, residential hotel, restaurant, eating house, theatre or other places of public amusement or entertainment. Further this Act includes establishment as notified by appropriate government. By understanding the ambit of the definition of establishment, we could expand the scope to include shops, commercial offices, even so this definition has exclude the workplace of domestic worker, because they are working within a house. Which could not be called as establishment within the meaning of this definition.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013) has explained and defined workplace for domestic worker by including dwelling home within the definition clause. Wherein home can be construed as work place for the purpose of said Act.

It is now dying need of domestic servant interests’ i.e. extending the scope of labour law legislations to make it applicable to domestic worker and include home or place in definition of workplace, establishment. Now days the placement agencies regulating employment and has providing domestic servant in metro cities and urban area. Therefore placement agencies must be regulate by state authority to secure and protect the labour rights of domestic workers. We have bulk of labour laws but none of the law regulate employment and placement of domestic workers except the Domestic workers Welfare and Social Security Act 2010. It recognize households or homes as workplaces But The scope of term workplace used in Domestic worker Act, 2010 is not wider because it does not include the work place other than home or household wherein domestic worker can be placed by placement agencies.

Status of domestic worker as worker/labour/employee and protective mechanism

Indian government has recognized their status as worker/labour/employee in some extent. Domestic workers are now included as an occupational category under certain following labour law mechanism. However, India does not have comprehensive legislation which include domestic worker as occupational category.

The Unorganized Workers’ Social Security Act (2008) this act has provided mechanism of the National Social Security Board with power and authority to recommend and formulation of social securities like maternity, old age and health security which cover worker belongs to unorganized sectors;’ the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013) this act has been made applicable to domestic worker specially the women employed under the term of employment. This act has been provided protective mechanisms to protect and prevent sexual harassment of woman at working place. Another
important Act i.e. The Child Labour Act (1986) this act come up with prohibition of child employment at any workplace which is of dangerous and hazardous to his life and health. Further this act prohibit employment of child by government servant. The Minimum Wages Act, 1948 said Central Act which has aimed at statutory fixation of minimum rates of wages in the employments, where sweated labour is prevalent with possibility for exploitation of unorganized labour. The provisions of the Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them. The Act aims at statutory fixation of minimum wages with a view to prevent exploitation of labour.

It is the duty of employer to pay without any default the standard minimum wages as prescribed or fixed by appropriate government under the authority of law. In India eleven states have included domestic work in the Schedule to the Minimum Wages Act, 1948.

Whereas, State legislations in India has extended ambit of labour policy by recognition of domestic worker’s status as worker/employee/ labour by inclusion of protective mechanism. The Tamil Nadu State Government has initiated positive state action by constitution of Tamil Nadu Domestic Workers Welfare Board in January, 2007 it has provided separate executive body to give assistant and social security benefit to domestic workers . The Maharashtra government has established domestic welfare board under the Maharashtra Domestic Workers Welfare Board Act, This Board has a three tier structure, it consist the representation of employer, employee and government. With tripartite structure with equal representation from employer, employees and the State Government

4.3. Judicial process in recognizing the domestic workers rights.

National Domestic Workers Welfare Trust v. Union of India In a petition filed by the National Domestic Workers Welfare Trust, in this petition the different issues of domestic worker were raised. The petitioner has sought protective and suggestive guidelines to protect human rights and constitutional rights as guaranteed by Indian constitution. I.e. security of minimum wages, social security and others labour law benefits like weekly holiday, maternity benefit and health safety. The petition further asking direction from apex court about enactment of comprehensive legislation to protect the legal interest of domestic workers. At present central government has submitted information that they are proposing Unorganized Sector Workers Bill, 2004 in response to this petition, respondent further submitted before court that this would have comprehensive provision of protection of domestic workers labour rights and interest?

Further in recognition of right of compensation, if domestic worker sustain any injury at the time of or in course of his or her employment and he or she has right to seek further medical assistant.

While promoting social justice as envisaged by preamble of constitution apex court held that it is right of labour to claim equality of law and equal protection of law, in all constitutional fundamental rights in matter of labour employment. In People’s Union for Democratic Rights v. Union of India, Justice P N Bhagwati put emphasis on the responsibility of the courts “to enforce the basic human rights of the poor and the vulnerable sections of the community and actively help in the realization of the constitutional goals.”

In Delhi Domestic Working Women’s Forum v. Union of India and Others supreme court come up with the direction that government has to do research studies or inquire into particular problems or circumstances, cases arising out of discrimination and sexual violence, harassment of women and identify the pitfalls.

In the history of workers right, Vishakha v. State of Rajasthan is milestone judgment, which has created road map for protection of women worker from sexual harassments at working place. It has held that, it is the preliminary duty of state to provide safe working environment and the right to life include life with dignity and working in safe environment. The state should come up with comprehensive legislation to provide safe working environment. Whatever the nature of sexual harassment, it violate and infringing the fundamental rights of working women under Articles 14, 19 and 21.

In issue of minimum wages of workers the Peoples Union for Democratic Rights v. Union of India invented new approach of industrial and labour jurisprudence, where apex court has evolved preposition, the Court held that “non-payment of minimum wages to the workers was a denial to
them of their right to livelihood, and therefore, the same is violative of Article 21 of the Constitution.” Bhagwati, J. held that “The rights and benefits conferred on the workmen employed by contractor under various labour laws are clearly "intended to ensure basic human dignity to workmen and if the workmen are deprived of any of these rights and benefits, that would clearly, be violative of Article 21 which guarantees right of life".

4.4. Constitutional framework: recognizing right to decent work

The Constitution of India is protective shield of every citizen. The mechanism provided under the labour law legislation are pleading legal interest of labour society. The protective mechanism shall be based on provisions of constitution. Right to decent work is a philosophy of the labour jurisprudence. In that sense constitution of India addressing and strengthen the labour interest by providing special emphasis on labour right. The dignity of labour has been recognized in Part-III and Part- IV of Indian Constitution. Taking education is the only way to change status and develop the approach of human being. The right to education which is now recognized as fundamental right of child who is above six years and below fourteen years of his age and state has to provide primary education free and compulsory.

In the line Article 38(2) of Indian constitution sensitizing the inequalities of social, economic status of worker and insisting the state to make policy which minimizes the in equal gap of income and social status. In the background of right to livelihood and decent work Article- 41 emphasis on right to work with dignity and government has provided employment guarantee by enactment called "The National Rural Employment Guarantee Act 2005". The social security measures has been addressed under Article-42 which has been securing interest of domestic worker in case of unemployment, old age and attempt to secure just and good condition of social life. State has extended the scope of minimum wages act- 1948 by adopting the policy of inclusion of domestic worker to make particle effect of decent standard life and just and fair working condition under Article- 43.

Further constitution allow to make positive discrimination among the citizen for empowerment and protection of interest of marginalized and disadvantaged group of society. The directive principles of state policy which are outcome of social and Gandi principles instructed state to frame public policy and promote interest of vulnerable, unorganized group of society specially women, child and labour.

The constitution of India provide legislative jurisdiction to state to make laws in matter described in to Entries 22, 23 and 24 of List III of the VII Schedule, The purpose behind this recognition of authority of state is to enforce the Article -39 of the Indian Constitution.

5. CONCLUSION

This paper has tried to inquire about the status of domestic worker under labour law protective mechanism in India and ILO framework. This paper has made discussion to develop industrial based approach in labour jurisprudence. It has analysed labour law protective mechanism and constitutional mechanism in context of domestic workers interest. This paper has tried to realize that it is now the dying need for recognition of domestic worker as industrial force, by extending the boundaries of terminology for workplace, labour, worker, employee and employer. Domestic worker is now need of working society .Therefore, in case of domestic worker, home should be treated workplace. The social justice as advocated by constitution of India would be effectively realized in the context of globalization. Further this paper has argued to recognize domestic worker within the ambit of the labour law legislation. It has stressed the education, health, decent life and other human rights are important human rights of domestic worker. It has highlighted the legal status of domestic worker under labour law protective mechanism by addressing and pleading the conflicting interest of domestic worker industry. It further argues that fundamental rights and constitutional remedies as provided under Indian constitution are best platform to report, abuses, harassment, exploitation and violation of human rights and labour rights of domestic worker. The domestic worker and domestic work has to be recognized in extensive manner within the context of industrialization.

REFERENCES

PRIMARY SOURCES
Acts, Statutes and Conventions

[1] Convention Concerning decent work for domestic workers, 2011 Convention No. 189 and Recommendation No. 201

Reports


Case laws-

[16] People’s Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

[20] Bachpan Bachao v. Union of India, 2010 SCC Online Sources