



## Social Security for Domestic Workers in India

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# SOCIAL SECURITY FOR DOMESTIC WORKERS IN INDIA

—Utkarsh Agrawal and Shailja Agarwal\*

*Among all categories of the informal sector, the protection of domestic workers forms one of the biggest challenges to labour laws. The inherent subjugation involved in the work, along with the atypical nature of the work of domestic workers, makes them more vulnerable than other workers in the economy. The difficulties are associated with the work being performed within the household, primarily for non-commercial purposes. The work space, being a private space, makes regulation and implementation difficult.*

*The lack of effective regulation and the extremely informal nature of the service render domestic workers without any basic protection. In the event of any economic uncertainty, they are left at the mercy of their employers. It is, therefore, essential to develop a system of social security that can afford adequate protection to domestic workers, with minimal state involvement in the affairs of the family.*

*This paper seeks to provide suggestions for such a scheme, which is suited to the peculiar characteristics of domestic workers in India. It recognises that scattered and isolated schemes are insufficient to afford adequate protection to workers. The social security model suggested is a decentralised model where social security is integrated with other important concerns such as minimum wages, skill development, and increasing awareness and bargaining power of domestic workers. These suggestions have been made after undertaking an analysis of existing legal provisions for domestic workers in India and the best*

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*practices from various jurisdictions that have seen relative success in providing social security to domestic workers.*

Introduction .....	31	Unionisation .....	52
Definition of a Domestic Worker .....	33	Legal Awareness .....	53
Problems of Domestic Workers .....	34	Fiscal Incentives .....	54
Legislative Analysis of Existing Indian Laws .....	39	Imposition of penalties .....	54
Early Attempts .....	39	Other Innovative Strategies .....	54
Expanding Existing Legislations .....	40	Use of service cheques .....	54
Minimum Wages Act, 1948 .....	40	Presumption of employment .....	55
Sexual Harassment Act, 2013 .....	41	Establishment of Welfare Fund .....	
Employees' State Insurance Act, 1948 .....	41	Boards .....	55
Special Statutes .....	42	Cheap Credit .....	56
Unorganised Workers' Social .....		The Proposed Solution .....	56
Security Act, 2008 .....	42	Substantive Law Provisions .....	57
State Legislations .....	44	Establishment of Welfare Boards .....	57
Judicial Attempts .....	45	Funding for social security .....	57
Legislations in the Pipeline .....	45	Dispute Resolution .....	58
Best International Practices .....	47	Tackling the problems faced by .....	
Types of social security .....	47	live-in domestic workers .....	58
Social Assistance .....	48	Regulating intermediaries .....	59
Employer's mandate .....	48	Long-term measures .....	59
Social Insurance .....	49	Improving Regulatory Compliance .....	59
Mandatory coverage .....	50	Awareness .....	59
Inspection of Household Premises .....	51	Unionisation .....	60
Dispute Resolution .....	52	Conclusion .....	60

## I. INTRODUCTION

A country, while drafting a policy, must be mindful of its domestic nuances. Imitating successful policies of other countries or even aggregating best international practices is unlikely to prove effective in the absence of due regard to internal considerations.<sup>1</sup> Such measures, oblivious of ground realities, would typically face poor implementation or, worse, might lead to adverse consequences upon implementation. The first step towards drafting a policy, therefore, would be to identify an area of focus and undertake a comprehensive analysis to demarcate specific issues that the policy can address. Then, the existing regulations must be perused to determine their shortcomings.<sup>2</sup> Thereafter, the best domestic

<sup>1</sup> Diane Stone, Learning Lessons, Policy Transfer and the International Diffusion of Policy Idea (Uni. Warwick, Working Paper No. 69/01, 2001), [http://wrap.warwick.ac.uk/2056/1/WRAP\\_Stone\\_wp6901.pdf](http://wrap.warwick.ac.uk/2056/1/WRAP_Stone_wp6901.pdf).

<sup>2</sup> United Nations Environment Programme, UNEP's NEW WAY FORWARD: ENVIRONMENTAL AND SUSTAINABLE DEVELOPMENT 157 (Lin Sun ed., 1995): The perusal of existing legislations for shortcomings is discussed in the context of environmental law but it is equally applicable to policy-making for other subjects as well.

and international practices should be identified.<sup>3</sup> Only after these steps have been undertaken, a working policy can be framed, which appropriately addresses the specific issues raised by utilising best practices to overcome the problems that plague the existing regulations. Finally, as is the general democratic process, this draft policy must be released for proper deliberations involving all stakeholders.<sup>4</sup> A policy, so drafted, is much more likely to be effective. This paper attempts to undertake the exercise of drafting a policy for social security of domestic workers in India.

Domestic workers are amongst the most exploited classes of workers.<sup>5</sup> Approximately, 4.75 million people in India are engaged as domestic workers.<sup>6</sup> With a growing urban middle class, the demand for domestic workers is only increasing.<sup>7</sup> One of the biggest challenges for domestic workers is the lack of economic security, which the nature of their employment subjects them to. In the event of any illness, injury, or economic needs of their family, they are left at the mercy of their employers, who offer them aid only as a favour. The situation is worse for those employees who are compelled to continue working in abusive and unfavourable spaces for fear of losing their only source of income.<sup>8</sup> Considering the number of workers who are engaged in domestic work and are currently excluded from such basic protection, the formulation of adequate schemes for bringing them within the fold of social security is a worthy goal.

However, owing to the peculiar and diverse nature of their work, regulation of domestic workers is fraught with difficulties. Several nations, including developed nations, are struggling to implement welfare legislation for domestic workers, with limited success. In India, such efforts have largely been scattered. We need specific regulations that can tackle the inherent problems unique to domestic workers and reduce the barriers associated with implementation of labour laws in this sector.

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<sup>3</sup> International Labour Office, Social Protection Department (SOCPRO), Geneva, Social protection for domestic workers: key policy trends and statistics, 10 (2016): The Foreword discusses the need for information on international trends in policymaking.

<sup>4</sup> David Kahane et al., Stakeholder and Citizen Roles in Public Deliberation, 9(2) J. PUB. DELIBERATION 1, 9-11 (2013).

<sup>5</sup> Decent Work for Domestic Workers, HUMAN RIGHTS WATCH (July 20, 2009), [https://www.hrw.org/news/2009/07/20/decent-work-domestic-workers#\\_ftn1](https://www.hrw.org/news/2009/07/20/decent-work-domestic-workers#_ftn1).

<sup>6</sup> Self-Employed Women's Association, Domestic Workers' Laws and Legal Issues in India (Nov. 2014), <http://www.wiego.org/sites/default/files/resources/files/Domestic-Workers-Laws-and-Legal-Issues-India.pdf>.

<sup>7</sup> International Labour Office, Indispensable Yet Unprotected: Working Conditions of Indian Domestic Workers at Home and Abroad (2015), [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_378058.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_378058.pdf).

<sup>8</sup> Suneetha Eluri & Alok Singh, Unionizing Domestic Workers: Case Study of the INTUC-Karnataka Domestic Workers Congress, International Labour Organization (2013) available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_218933.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_218933.pdf).

In Part II, we provide a working definition of domestic workers, taking into account all the discussion typically associated with the definition. After highlighting problems associated with domestic workers in Part III, we undertake a comprehensive analysis of all Indian laws applicable to domestic workers. In Part IV, we look at the implementation of these laws. Part V is a compilation of best international practices adopted by various countries in regulating domestic workers. Finally, in Part VI, we propose a working solution aimed at alleviating the problems of domestic workers, while according them adequate social security protection.

## II. DEFINITION OF A DOMESTIC WORKER

In a welfare law, entitlement to benefits often depends solely on the definition clause. A particular class of workers may be denied benefits under an Act because of a narrow definition clause. It is, therefore, essential to maximise the scope of the definition and include, within its domain, the diverse activities that constitute domestic work. Extending the definition of “domestic worker” beyond its traditional understanding, may also extend protection to workers who fall outside the classic definition but are in as much need of protection. Moreover, a broad definition will also help in the better collection of statistics, as classes of workers will not be excluded based on technicalities of the definition.

Further, it is a general international practice to provide a broad indicative list, enlisting the various services that constitute domestic work.<sup>9</sup> This helps in providing clarity on certain common tasks which are considered domestic work, without the limitations of an exhaustive definition.<sup>10</sup>

It must also be determined whether “domestic work” ought to be confined to work which is limited strictly to the household<sup>11</sup> or should extend<sup>12</sup> to workers performing domestic work in unregulated commercial enterprises. The Draft Labour Code for Social Security and Welfare 2017, introduced as a Bill by the

<sup>9</sup> Art. 2, Laws of Fiji, Chapter 92, Employment ordinance; Malaysia’s Employment Act, 1955, Art. 2, Art. 4, Republic Act No. 10361.

<sup>10</sup> Some jurisdictions exclude commercial work from the definition of domestic work such as: § 161 of the Labour Code, Guatemala excludes work that provides profit or business for the employer. Similar exclusions are found in Art. 2 of Singapore’s Employment Act and Art. 2 of Malaysia’s Employment Act, 1955. While some other jurisdictions have expressly refused to draw any such distinction, Art. 77 of Código de Trabajo of El Salvador makes it immaterial whether the work is for the profit of the employer or not. As of today, given the social scenario in India, such a distinction is not tenable. However, we do not intend to introduce any express refusal in our definition so as to leave it open to the Courts to take an alternative approach in a more suitable future.

<sup>11</sup> In Mexico, § 332 of the Federal Labour Act specifically excludes such workplaces as hotels, restaurants, hospitals, boarding schools, and similar establishments from the scope of domestic work; *See also* The Labour Code of Paraguay, § 150.

<sup>12</sup> Costa Rica’s Executive Decree No. 19010-G of 1999, § 139: It includes domestic workers in monasteries and convents; Art. 2, Employment Act of Singapore: It provides for work done “in or in connection with a household”.

government, has proposed a broad definition of workers that has opted for the latter definition by using the words “employed in any households or similar establishments”.<sup>13</sup> However, the word “similar establishments” has a specific meaning that might limit the scope of the definition.<sup>14</sup> We, therefore, suggest an open-ended definition, which does not attempt to limit domestic workers spatially.

Based on the above considerations, this paper proposes the following definition of domestic workers:

A domestic worker is any individual, whether employed directly or indirectly, involved in domestic work including cooking, cleaning, gardening, caretaking of children, elderly or sick persons, driving vehicles, laundry, and being a watchman. Domestic work only qualifies the nature of work and does not impose situational limitations, such as household premises.

We propose two distinct categories of domestic workers: part-time domestic workers and live-in domestic workers.<sup>15</sup> Part-time domestic workers are employed in one or more households for a limited period of time. Live-in domestic workers are employed in one house, spending most hours of the day in that household, with limited social interaction beyond the members of the household, and residing in the household premises. A number of issues are common to both the categories, even though they differ substantially in intensity. Further, each of the two categories has some problems unique to their situations, which need to be addressed separately.

### III. PROBLEMS OF DOMESTIC WORKERS

The problems faced by domestic workers today are wide and diverse. In order to ensure effective safeguards against them, we should have a complete understanding of the vulnerabilities of the workers and their problems. Ideally, domestic workers should be awarded economic benefits on a subjective analysis of their

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<sup>13</sup> Draft Labour Code for Social Security and Welfare, 2017, § 2.39: “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; Explanation- 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, gardening, caring/nursing of the children/sick/old/mentally challenged or disabled persons”.

<sup>14</sup> *Id.*, § 2.48 r/w § 2.45.

<sup>15</sup> Director General Labour Welfare, Ministry of Labour and Employment, Final Report of the Task Force on Domestic Workers (2011), [http://wiego.org/sites/wiego.org/files/resources/files/dw\\_taskforce\\_report.pdf](http://wiego.org/sites/wiego.org/files/resources/files/dw_taskforce_report.pdf): The Report divides domestic workers in three categories: Part Time, Full Time and Live-in. However, in our opinion, the category designated as full-time domestic worker can be adequately covered cumulatively by the other two categories.

skill, like in the case of highly skilled individuals. In such a scenario, the problems faced by them can also be dealt with in a subjective manner through litigation. In India, due to a slow and overburdened judiciary, litigation is of little realistic help.

First, the lack of collective bargaining, coupled with a large supply of workers, has resulted in low wages for domestic workers<sup>16</sup> which solely benefits the relatively well-off employer at the cost of the vulnerable domestic workers.<sup>17</sup> Most domestic workers are paid deplorable wages despite long working hours.<sup>18</sup>

Both, part time and live-in workers, lose out due to the lack of collective bargaining. However, the stakes are higher for the live-in workers as they are entirely dependent on the employer for, both, monetary and non-monetary facilities. Provisions regarding basic food and accommodation, working hours, working days, overtime and other such issues form an inseparable part of their employment, which cannot be tackled solely by regulations on monetary considerations, like minimum wages. In this aspect, the part time workers, in general, are relatively less susceptible than live-in ones as the short duration of time spent in various households reduces the overall vulnerability and reliance on one particular employer for subsistence.<sup>19</sup> Hence, while these issues could arise in case of part-time workers, its relevance is somewhat secondary when compared to monetary considerations.

Secondly, there is a lack of skill development in domestic workers.<sup>20</sup> To appropriately address their plight, we must take into account the effect of technological inventions on their livelihoods. The majority of the work performed by both categories of domestic workers has a low requirement of skill and includes mechanical work, like washing dishes or clothes, cleaning and dusting, ironing,

<sup>16</sup> Neetha N. & Rajni Palriwala, *The Absence of State Law: Domestic Workers in India*, 23(1) CAN. J. WOMEN & L. 97, 101, 104-105 (2011); Renuka Ramanujam, *Influx of Tribal Domestic Workers: A Study of Role of Placement Agencies in Delhi*, Ministry of Women and Child Development Government of India, <http://wcd.nic.in/Schemes/research/Influx06052015.pdf>.

<sup>17</sup> Bipul Hazarika et al., *Indian Women: Rights, Economic Position and Empowerment*, Centre for Women's Studies (2002); Ragini Bhuyan, *Who'll Cry for Domestic Workers?*, LIVE MINT (Sep. 30, 2017), <http://www.livemint.com/Politics/XERWJTd0p4JhFzp6mEXjWK/Wholl-cry-for-domestic-workers.html>; Pankhuri Tandon, *Domestic Workers: How to Give Them Their Due* 14-19 (Centre for Civil Society, Working Paper No. 278, 2012); *The impact of placement agencies*; Neetha N., *Minimum Wage Setting Practices in Domestic Work: an Inter-State Analysis*, International Labour Office, Geneva (2015); Even where minimum wages are prescribed for domestic workers, they are generally lower than other similarly placed workers.

<sup>18</sup> Rajni Palriwala, *supra* note 16, at 111-113.

<sup>19</sup> *Domestic Workers*, WIEGO, <http://wiego.org/informal-economy/occupational-groups/domestic-workers>; LISA RODGERS, *LABOUR LAW, VULNERABILITY AND THE REGULATION OF PRECARIOUS WORK*, 162 (2016).

<sup>20</sup> Task Force, *supra* note 15, at 12, 14: One of the recommendations of the task force recommended skill training programme.

and so on.<sup>21</sup> With the growth of the middle class, which is the primary source of employment for domestic workers, there is an increased chance of replacement of domestic workers by electrical appliances, such as dishwashers and washing machines.<sup>22</sup> To some extent, the impact of technological advancement so far has been offset by the increasing size of the Indian middle class.<sup>23</sup> However, the increasing modernisation of India's middle class<sup>24</sup> is only likely to aggravate the problem in the future. Additionally, the increasing inequality,<sup>25</sup> which is often an indicator of reduced mobility along class divisions, portends a rather subdued demand in the market for low-skilled domestic workers.

When it comes to skill development, the part-time domestic worker is at a disadvantage when compared to the live-in domestic worker. The development of skill in the part-time domestic workers is often limited to the specific work they perform in different households, like washing dishes or clothes. There is little development of non-mechanical skills, like cooking, in most part-time workers.<sup>26</sup> Live-in workers, who are typically employed to perform a variety of household functions, do develop substantial non-mechanical skills including some managerial skills.<sup>27</sup> It is nevertheless essential to impart skill training to both these categories of domestic workers to protect their livelihood.

Thirdly, domestic workers in India often face abuse in the workplace. In India, people belonging to the lower strata of the society, generally, have little awareness about the rights and remedies available to them.<sup>28</sup> Additionally, given their dependence on wages for basic subsistence,<sup>29</sup> there is little or no choice but to tolerate exploitative working conditions for economic security. Even in those limited

<sup>21</sup> See Bino Paul, G.D. Susanta Datta and Venkatesha Murthy R., *Working and Living Conditions of Women Domestic Workers: Evidences from Mumbai*, Tata Institute Of Social Sciences (2011).

<sup>22</sup> Nona Walia, Robot maids to battle Shantabai, *THE TIMES OF INDIA* (June 22, 2011), <http://timesofindia.indiatimes.com/life-style/people/Robot-maids-to-battle-Shantabai/articleshow/15090597.cms>.

<sup>23</sup> Sonal Sharma, Housing, Spatial-Mobility and Paid Domestic work in Millennial Delhi: Narratives of Women Domestic Workers, in *SPACE, PLANNING AND EVERYDAY CONTESTATIONS IN DELHI* 201, 203 (Surajit Chakravarty & Rohit Negi eds., 2015).

<sup>24</sup> Ismat Tasleen, How Dependent Are We on Technology?, *THE TIMES OF INDIA* (Oct. 9, 2013), <http://timesofindia.indiatimes.com/life-style/relationships/man-woman/How-dependent-are-we-on-technology/articleshow/24491279.cms>.

<sup>25</sup> Remya Nair, IMF warns of growing inequality in India and China, *LIVEMINT* (May, 4, 2016), <http://www.livemint.com/Politics/mTf8d5oQzMwvzaGy4yMN/IMF-warns-of-growing-inequality-in-India-and-China.html>.

<sup>26</sup> Surabhi Tandon Mehrotra, *A Report on Domestic Workers: Conditions, Rights and Responsibilities- A study of part-time domestic workers in Delhi*, JAGORI (2010): With the exception of those part-time workers whose specific work is cooking.

<sup>27</sup> Vimala M., *Socio-Economic Status of Domestic Women Servants - A Case Study of Thrissur Corporation*, §§ 2.9.1 & 3.1, <http://www.cds.ac.in/krcpds/report/vimala.pdf>.

<sup>28</sup> See generally Martin Ravallion et al., *Testing Information Constraints on India's Largest Anti-Poverty Program 2-3* (The World Bank, Working Paper No. 6598, 2013).

<sup>29</sup> National commission for Enterprise in the Unorganised Sector, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector* (2007) 86.



cases, where they attempt to enforce their rights, they face institutional apathy and discrimination. Due to the lack of any regulatory regime in households, they are left at the mercy of employers, often facing sexual or physical abuse without any recourse.<sup>30</sup>

Live-in domestic workers have few interactions with people other than the employer and the employer's family and must rely on them for accommodation, food, and basic economic security. Therefore, the live-in domestic workers are more likely to face and tolerate abuse by the employer or the employer's family, making them highly vulnerable.<sup>31</sup> Part-time domestic workers, though also vulnerable, enjoy interactions outside of employment, such as with friends and family, and are less likely to tolerate abuse.

Fourthly, domestic workers in India are usually subjected to discrimination. In India, the concept of domestic workers, especially live-in domestic workers, reflects the vestiges of caste and class discrimination.<sup>32</sup> Employing servants reinforces discriminatory behaviour. Live-in domestic workers are inevitably relegated to a lower position in the household.<sup>33</sup> The fact that these domestic workers mostly come from marginalised sections of the society,<sup>34</sup> subjects them to further socio-economic discrimination. The power imbalance between the employer and the domestic worker, with the employer exercising control over the domestic worker, coupled with a feeling of casteist or classist superiority over the domestic worker leads to exploitative and harsh treatment being meted out to the domestic worker.<sup>35</sup> The domestic workers typically internalise the discrimination, leading to far-reaching psychological consequences, including loss of individuality.

As a consequence of such discrimination, inadequate nutrition is provided to domestic workers. Domestic workers, especially live-in domestic workers, are majorly dependent on the employer for their daily nutritional needs. However, little or no attention is paid by the employer to the nutritional needs of domestic

<sup>30</sup> 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.org/files/resources/files/fw%20%26%20dw\\_consultation\\_bangalore\\_report.pdf](http://wiego.org/sites/wiego.org/files/resources/files/fw%20%26%20dw_consultation_bangalore_report.pdf).

<sup>31</sup> Aditya Srivastava, A maid-in-India problem, GOVERNANCE NOW (June 19, 2012), <http://www.governancenow.com/views/columns/maid-india-problem>.

<sup>32</sup> See Vimala M., *supra* note 27, at §2.1; G. Sampath, Who Will Help India's Domestic Helps? LIVE MINT (Oct. 31, 2013), <http://www.livemint.com/Opinion/Bj0ZhynE5rIO3zF3KntzkL/Who-will-help-Indias-domestic-helps.html>.

<sup>33</sup> Second national Labour Commission, Report of the Second National Commission on Labour (2002) 611.

<sup>34</sup> N. Neetha, Making of Female Bread Winners: Migration and Social Networking of Women Domestic in Delhi, 39(17) ECON. & POL. WKLY. 1681, 1683 (Apr. 24, 2004); India: Domestic Workers, ANTI-SLAVERY ORGANISATION, <https://www.antislavery.org/what-we-do/where-we-work/india-domestic-workers/>.

<sup>35</sup> Craig Haney et al., Interpersonal Dynamics In A Simulated Prison (Stanford University), Office of Naval Research (1972).

workers. In fact, it is often relegated to the lowest priority by the employer. A majority of them are only provided with basic staple food in limited quantity. This systemic lack of adequate nutrition over decades has serious health consequences for the domestic workers and their children.<sup>36</sup> It is imperative to ensure proper nutrition for these domestic workers who can ill-afford the high cost related to medical problems.

Fifthly, domestic workers lack any form of social security. Like most workers in the informal sectors, part-time and live-in domestic workers have little or no access to basic social security, such as healthcare benefits, unemployment protection, or maternity benefits.<sup>37</sup> With wages for domestic workers often already below minimum wage,<sup>38</sup> the lack of social security has a paralysing impact on their livelihood in cases of health issues, which is quite frequent courtesy the systemic nutritional deficiency. Moreover, a significant percentage of domestic workers are women,<sup>39</sup> who face sexual abuse in their personal lives by their husbands and have little or no say in childbirth.<sup>40</sup> In the absence of maternity benefits, most of them end up losing their employment, the security of a meagre income. They are rarely given recognition as “workers”, according them a lower status in society and, consequently, in the economy, even when compared to other workers in the informal sector.<sup>41</sup> Some extent of economic freedom is necessary to effectively participate in a free market economy and to realise one’s capabilities.<sup>42</sup> Adequate social security would ensure they are in a position to act in their best interests without being enslaved by their immediate economic needs. It would act as a cushion to mitigate risks with respect to incomes and would help them cope in the event of any shocks.

The issues faced by domestic workers substantially fall under one or more of the aforementioned five categories. In a significant number of cases, these problems are further aggravated by the role played by intermediaries such as Placement Agencies and Resident Welfare Associations. Placement agencies

<sup>36</sup> Dithhi Bhattacharya, Meghna Sukumar and Mohan Mani, *Living on the Margins: A Study of Domestic Workers in Chennai, India*, Centre for Workers’ Management, <http://www.amrc.org.hk/sites/default/files/Domestic%20workers%20in%20Chennai%20India%20-%20CWM.pdf>; Unionizing Domestic Workers: Case Study of the INTUC- Karnataka Domestic Workers Congress, International Labour Organisation, Geneva (2013).

<sup>37</sup> International Labour Office, Social Protection Department (SOCPRO), Geneva, *Social protection for domestic workers: key policy trends and statistics*, 10 (2016).

<sup>38</sup> Rajni Palriwala, *supra* note 16, at 111.

<sup>39</sup> Shrayana Bhattacharya & Shalini Sinha, *Domestic Workers in India: Background and Issues* (2009) <http://182.71.188.10:8080/jspui/bitstream/123456789/496/1/Domestic%20Workers%20in%20India.pdf>.

<sup>40</sup> *Id.*

<sup>41</sup> Shrayana Bhattacharya and Shalini Sinha, *Domestic Workers in India: Background and Issues* (2009), <http://182.71.188.10:8080/jspui/bitstream/123456789/496/1/Domestic%20Workers%20in%20India.pdf>.

<sup>42</sup> See AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 38 (1999): Economic facilities is seen as one of the five main distinct freedoms identified by Sen.

often lead to greater economic exploitation of workers by paying workers a paltry amount from the sum they actually collect from employers.<sup>43</sup> They are often involved in serious crimes like human trafficking and abuse of domestic workers.<sup>44</sup> Resident Welfare Associations ('RWAs') grant even greater bargaining power to employers in terms of determining work hours, wages, and have even been known to boycott a class of workers.<sup>45</sup> In the absence of equivalent domestic worker unions, this enhances the exploitation of domestic workers.

It would now be useful for us to analyse how our domestic legislations have attempted to address such problems.

#### IV. LEGISLATIVE ANALYSIS OF EXISTING INDIAN LAWS

The plight of the informal sector workers has largely been ignored by the Indian Legislature. There is a lack of adequate legislations to regulate the service conditions of domestic workers. This part attempts to give a comprehensive analysis of bills and legislations that have attempted to provide some protection to domestic workers.

##### A. Early Attempts

The earliest attempt to have a national law regulating the services of domestic workers dates back to the Domestic Worker (Conditions of Service) Bill, 1959 and the House Workers (Conditions of Service) Bill, 1989.<sup>46</sup> However, these bills never sparked any important discourse and were never enacted.

The first concrete attempt was made by the introduction of the Housemaids and Domestic Workers (Conditions of Service and Welfare) Bill, 2004 ("Act of 2004") in the Rajya Sabha.<sup>47</sup> It was a relatively simple bill which required the State and Central Government to compulsorily register domestic workers in their territorial jurisdiction, in addition to framing rules to ensure employment opportunities, suitable work conditions, medical benefits, and other provisions.<sup>48</sup>

<sup>43</sup> N. Neetha, *Contours of Domestic Service: Characteristics, Work relations and Regulations*, 52(3) INDIAN J. LAB. ECON. 498, 500 (2009).

<sup>44</sup> United Nations Office on Drugs and Crime, *The role of recruitment fees and abusive and fraudulent practices of recruitment agencies in trafficking in persons*, 44 (2015), [https://www.unodc.org/documents/human-trafficking/2015/15-05035\\_ebook-\\_Recruitment\\_Fees.Agencies.pdf](https://www.unodc.org/documents/human-trafficking/2015/15-05035_ebook-_Recruitment_Fees.Agencies.pdf).

<sup>45</sup> *Maids in modern India: How a class conflict in a Noida housing society assumed communal tones*, THE ECONOMIC TIMES (July 23, 2017), <http://economictimes.indiatimes.com/news/politics-and-nation/maids-in-modern-india-how-a-class-conflict-in-a-noida-housing-society-assumed-communal-tones/articleshow/59715317.cms>.

<sup>46</sup> Rajni Palriwala, *supra* note 16, at 112.

<sup>47</sup> Housemaids and Domestic Workers (Conditions of Service and Welfare Bill), 2004: This Bill was never enacted.

<sup>48</sup> *Id.*

Heavy penalties, including fine and simple imprisonment, were to be imposed on employers engaging unregistered domestic workers or employers acting in contravention of the rules.<sup>49</sup> Beyond seeking compulsory registration, the Bill did not propose any guidelines either regarding the substantive provisions or any implementation mechanism,<sup>50</sup> but largely left it to the State and Central Governments, already known for their inefficiency and apathy.<sup>51</sup>

## B. Expanding Existing Legislations

### (a) *Minimum Wages Act, 1948*

Several provisions of the pre-existing laws have been extended to include domestic workers to address certain specific concerns, such as Minimum Wages Act, 1948 for regulation of wages.<sup>52</sup> At the end of 2013, only eleven states have added domestic work in the Schedule to the Minimum Wages Act, 1948.<sup>53</sup> More than half of the states, including the populous state of Uttar Pradesh, are yet to notify minimum wages for domestic workers.

Even in most states that have notified minimum wages for domestic workers, the implementation record is abysmal, eliminating any pragmatic difference between states with or without minimum wages. In 2013, Rajasthan and Jharkhand launched 3 and 8 prosecutions respectively under the Minimum Wages Act, 1948 across all sectors including formal and informal employment.<sup>54</sup> It is safe to presume that none of them were cases involving domestic workers, given the cautious approach of the State in inspecting and prosecuting households.<sup>55</sup> Minimum wages notifications are also plagued by poor awareness of all parties in the transaction - domestic workers, employers, and labour inspectors (especially in rural areas)- which further impedes an effective implementation.

In addition to the problems of implementation, there are several substantive problems with such notifications. It has been noted by the ILO paper on Minimum Wages that there is little correlation between minimum wage and

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> See generally JEAN DRÈZE & AMARTYA SEN, AN UNCERTAIN GLORY: INDIA AND ITS CONTRADICTIONS 81 (2013).

<sup>52</sup> Rajni Palriwala, *supra* note 16, at 115.

<sup>53</sup> Labour Bureau Chandigarh, Ministry of Labour and Employment, Government of India, Report on the Working of the Minimum Wages Act, 1948 for the Year 2013, available at [http://labourbureau.nic.in/MW\\_2013\\_final\\_revised\\_web.pdf](http://labourbureau.nic.in/MW_2013_final_revised_web.pdf): The following states have extended applicability of Minimum Wages Act, 1948 to domestic workers- Punjab, Karnataka, Haryana, Dadra and Nagar Haveli, Andhra Pradesh, Bihar, Rajasthan, Kerala, Meghalaya, Tripura, Odisha and Jharkhand.

<sup>54</sup> *Id.*

<sup>55</sup> Neetha N., *supra* note 17, at 37-39: General reluctance to inspection of household premises, no requirement to maintain registers. Poor implementation in general.

market wage.<sup>56</sup> For instance, some domestic workers are paid much less than the minimum wages,<sup>57</sup> while, in other cases, the market wages are higher than the minimum wages.<sup>58</sup> No distinction is made between rural minimum wage and urban minimum wage,<sup>59</sup> depending on the expenses of the domestic workers. In most states, there is no provision restricting working hours, which is immensely problematic for live-in domestic workers,<sup>60</sup> except a requirement to pay overtime wages.

### **(b) Sexual Harassment Act, 2013**

In order to tackle sexual harassment in domestic households, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“Act of 2013”) has sought to protect domestic workers through the establishment of a district-level grievance redressal mechanism: Local Complaints Committee, which has the power to award monetary compensation.<sup>61</sup> This Act is not meant to deal with transgression of a more serious nature, as is necessary in cases of domestic workers.<sup>62</sup> Not only is the Act of 2013 plagued with several loopholes and inadequate provisions but even the existing provisions have largely remained unknown and unimplemented.<sup>63</sup> In practice, the Act of 2013 has failed to make any impact on the lives of domestic workers.

### **(c) Employees’ State Insurance Act, 1948**

In 2016, as a pilot scheme, the Labour Ministry extended the application of Employees’ State Insurance (“ESI”) to domestic workers in Delhi and Hyderabad.<sup>64</sup> Only limited medical benefits under the Scheme have been extended to them,<sup>65</sup> leaving sickness benefit, maternity benefit, disablement benefit, dependents’ benefits, and other need-based benefits outside their reach. Moreover, domestic workers have been held to be under the category of self-employed

<sup>56</sup> *Id.*

<sup>57</sup> Nimushakavi Vasanthi, Addressing Paid Domestic Work: A Public Policy Concern, 46(43) ECON. & POL. WKLY. 85, 91 (Oct. 22, 2011): Even when minimum wages are notified, it is often considerably lower than similar ones in the informal sector.

<sup>58</sup> Neetha N., *supra* note 17, at 50.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Section 13(3)(ii).

<sup>62</sup> Government Order No.12, Labour and Employment Department, Government of Tamil Nadu (January 22, 2007).

<sup>63</sup> Namrata Singh, Compliance to Sexual Harassment Law Poor, THE ECONOMIC TIMES (Sep. 18, 2016), <http://economictimes.indiatimes.com/news/politics-and-nation/compliance-to-sexual-harassment-law-poor/articleshow/49008909.cms>.

<sup>64</sup> Employee’s State Insurance Corporation, Office Order No. X-11/14/4/2016-P&D, Sep. 21, 2016, available at <http://www.esic.nic.in/attachments/circularfile/595898c0fddf3820ad6287ccbeff539b.pdf>.

<sup>65</sup> *Id.*

workers,<sup>66</sup> thereby failing to recognise the domestic space as a work space where rights like minimum wages, working conditions and so on need to be regulated.<sup>67</sup> Accordingly, contributions are payable only by the workers and not by the employers. Registration of domestic workers is voluntary.<sup>68</sup> While the scheme may provide limited relief to some workers, it appears to be another scattered attempt to protect domestic workers where regulations meant for the formal workforce are arbitrarily modified for the informal sector.

### C. Special Statutes

#### *(a) Unorganised Workers' Social Security Act, 2008*

Another important legislation, similarly targeting the entire unorganised sector, is the Unorganised Workers' Social Security Act, 2008 ("Act of 2008"). While the Act of 2008 has included domestic workers within the unorganised sector, it has not defined domestic workers, making the implementation of the Act difficult. This Act sets up a National Social Security Board and State Social Security Board in every state.<sup>69</sup> The board has tripartite representation- the unorganised worker, employers, and the government, and it recommends social security schemes for unorganised workers.<sup>70</sup> The Act of 2008 also requires registration with the district administration in order to avail social security benefits of the scheme and requires contribution from the workers. Unlike the Bill of 2004, registration under the Act is voluntary. While setting up Boards for the unorganised sector workers is a welcome step in line with international practice, the National Social Security Board and State Social Security Board are mainly relegated to advisory and monitory roles in formulation and implementation of schemes.<sup>71</sup> Even though the Act prescribes registration, the entire process is delegated to the district administration. Often termed as a mirage, these Boards do not seem to possess any substantive power to bring about a positive change.<sup>72</sup>

Even though a decade has passed since its enactment, benefits under the Act of 2008 have not accrued to domestic workers. Recently, the Supreme Court has given directions to the Labour Ministry to undertake registration of domestic

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<sup>66</sup> *Id.*

<sup>67</sup> Neetha N., Employees' State Insurance Scheme for Domestic Workers: Yet Another Mockery, 52(11) ECON. & POL. WKLY., 16, 17 (Mar. 18, 2017).

<sup>68</sup> *Id.*

<sup>69</sup> Unorganised Workers' Social Security Act, 2008, Chapter III.

<sup>70</sup> *Id.*

<sup>71</sup> Rathish Balakrishnan, Review of Social Security for Unorganised Workers in India, THE ALTERNATIVE (Mar. 29, 2016), <http://www.thealternative.in/society/review-of-social-security-for-unorganized-workers-in-india/>.

<sup>72</sup> V. Shankar & B. Sivaraman, Unorganised Workers' Social Security Act 2008: A Beginning for Bigger Struggles!, COMMUNIST PARTY OF INDIA (MARXIST-LENINIST) LIBERATION, [http://archive.cpi.ml.org/liberation/year\\_2009/feb\\_09/commentary\\_3.html](http://archive.cpi.ml.org/liberation/year_2009/feb_09/commentary_3.html).

workers under the Act in collaboration with local legal services authority.<sup>73</sup> Further, recognising the pragmatic difficulties arising out of the Act, which covers schemes under different ministries, the Central Government has launched a pilot scheme to create a single point of contact for all schemes.<sup>74</sup> However, given the number of persons employed as domestic workers, the lack of awareness, and the lack of incentive on the part of employers, these measures will not result in registration of the entire workforce.

One of the schemes under the Act of 2008 is the Rashtriya Swasthya Bima Yojna ('RSBY'). It is a state-sponsored insurance scheme, modelled as an alternative to universal healthcare.<sup>75</sup> In June 2011, the RSBY scheme was extended to bring domestic workers within its ambit.<sup>76</sup> Certainly a welcome step, the scheme provided some much-needed medical benefits to domestic workers. The criterion for identification of domestic workers is also relatively simple.<sup>77</sup> The implementation of the registration mechanism is left to the State Government. The scheme has by and large been praised globally and has led to some medical benefits being enjoyed by its beneficiaries.<sup>78</sup> There has been some legitimate criticism of the scheme, citing lack of information regarding benefits, lack of professionals to manage technologies, lack of coverage in rural areas and lack of quality in associated hospitals. Additionally, the scheme has also suffered several setbacks due to frauds and,<sup>79</sup> more importantly, the lack of allocation of Government funds.<sup>80</sup> Nevertheless, the scheme has provided some semblance of medical benefits to the domestic worker in urban areas.

<sup>73</sup> *Shramjeevi Mahila Samiti v. State of NCT of Delhi*, SLP (Crl.) No. 150 of 2012, order dated 4-8-2012 (SC).

<sup>74</sup> Ministry of Labour and Employment, Guidelines for the Pilot for Convergence in Implementation of Major Social Security Schemes for Unorganised Workers in India on a Single Platform, June 20, 2014.

<sup>75</sup> See generally An Uncertain Glory, *supra* note 51, at 152: This book heavily criticises an insurance-based model as a replacement for universal healthcare due to increasing cost of healthcare and consequent reduction in beneficiaries due to budget cuts.

<sup>76</sup> Domestic Workers Now Covered Under Health Insurance Scheme, THE HINDU (June 24, 2016), <http://www.thehindu.com/news/national/domestic-workers-now-covered-under-health-insurance-scheme/article2129083.ece>.

<sup>77</sup> Rashtriya Swasthya Bima Yojana, Government of India, Guidelines for Extension of RSBY to Domestic Workers, available at <http://rsby.gov.in/docs/RSBY%20Guidelines%20for%20Domestic%20Workers%2026.6.11.pdf>. Any two of the four may be used for identification: employer certificate, certificate by resident welfare association, certificate from registered trade union, police verification certificate; The identification criteria also incentivise domestic workers to affiliate with unions.

<sup>78</sup> Sujatha, Rashtriya Swasthya Bima Yojana (RSBY), MAPSOFINDIA (Aug. 28, 2016), <http://www.mapsofindia.com/my-india/government/rashtriya-swasthya-bima-yojana-rsby>.

<sup>79</sup> Samar Halarnkar, Thought for Food, HINDUSTAN TIMES (July 23, 2011), <http://www.hindustan-times.com/india/thought-for-food/story-83uqZ6Zlyapf85xTQFgD9O.html>.

<sup>80</sup> David M. Dror & Sukumar Vellakkal, Is RSBY India's Platform to Implementing Universal Hospital Insurance?, 135 INDIAN J. MED. RES. 56, 61 (2012).

### ***(b) State Legislations***

We shall now analyse certain legislative attempts by Maharashtra and Tamil Nadu to provide social security and safety of workplace for domestic workers.

The Tamil Nadu Government established the Tamil Nadu Domestic Workers Welfare Board in January, 2007<sup>81</sup> bringing domestic workers under the Tamil Nadu Manual Wages Act, 1982 ("Tamil Nadu Act"). Under this Act, the State of Tamil Nadu, recognising the vastness and intricacies involving domestic workers, has created a completely separate administration for the Board concerning domestic workers, while all other Boards have a common administration.<sup>82</sup> The benefits available include education assistance, marriage assistance, delivery assistance, accidental death, and pension. It is certainly a progressive step towards providing wholesome social security to domestic workers. However, in 2007-2009, approximately seventeen thousand beneficiaries obtained around Rs. 3.4 crores averaging Rs. 2000 per beneficiary.<sup>83</sup> In 2013-2014, 11,000 beneficiaries claimed around Rs. 2.2 crores, again averaging Rs. 2000 per beneficiary. Despite the number of beneficiaries and the amount of money allocated having increased substantially,<sup>84</sup> average pay-out remains the same despite increasing cost of living.<sup>85</sup> This goes on to perhaps highlight the inadequacy of the amounts fixed as benefits. There has also been criticism highlighting the poor awareness of the Board and consequent low registration under the Tamil Nadu Act.<sup>86</sup>

The Maharashtra Domestic Workers Welfare Board Act, 2008 ("Maharashtra Act") accords the State Government the power to establish District Domestic Labour Welfare Board. This Board has a tripartite structure with equal representation from employer, employees and the State Government.<sup>87</sup> The board also works on a voluntary registration system, which accords some social security benefits to its beneficiaries. The benefits available under this Act, somewhat less diverse than the Tamil Nadu Act, include accident benefit, financial assistance for education of children, maternity benefit, and medical expenses.<sup>88</sup> The primary monetary sources of the Board are the contribution of the beneficiaries

<sup>81</sup> Thiru T.M. Anbarasan, Policy Note on Labour, Factories, Employment and Training, Labour and Employment Department, available at [http://cms.tn.gov.in/sites/default/files/documents/labour\\_1.pdf](http://cms.tn.gov.in/sites/default/files/documents/labour_1.pdf).

<sup>82</sup> Tamil Nadu Manual Workers Welfare Board, Chennai, Pro-Active Disclosure Under Section 4 of the Right to Information Act, 2005 (2009), available at [http://www.tn.gov.in/rti/proactive/labour/handbook\\_welfareboards.pdf](http://www.tn.gov.in/rti/proactive/labour/handbook_welfareboards.pdf), Tamil Nadu Manual Workers Welfare Board, Chennai.

<sup>83</sup> *Id.*

<sup>84</sup> State Planning Commission, Government of Tamil Nadu, The Working of Welfare Boards for Organised/Unorganised Sectors in Labour Welfare in Tamil Nadu (2014), [http://www.spc.tn.gov.in/reports/Labour\\_welfare.pdf](http://www.spc.tn.gov.in/reports/Labour_welfare.pdf).

<sup>85</sup> *Id.*

<sup>86</sup> Thozhilalar Koodam, Domestic Workers: Still an exploited lot, TN LABOUR (Nov. 4, 2013), <http://tnlabour.in/?p=1946>.

<sup>87</sup> Maharashtra Domestic Workers Welfare Board Act, 2008, Section 3(3).

<sup>88</sup> *Id.*, Section 10.



and the grant by the State Government.<sup>89</sup> The setting up of Welfare Boards under the Maharashtra Act is a step forward from the Social Security Board set up under the Act of 2008. It is a progressive step towards providing social security. However, the Board does not possess any dispute resolution or grievance redressal powers. It cannot even prescribe and regulate the working conditions of domestic workers. Further, despite being enacted in 2008, the Rules were framed under this Act only in 2010,<sup>90</sup> showcasing the legislative indifference and inefficiency. Registration under the Act, ever since its conception, has also been unsatisfactory.<sup>91</sup>

### **(c) Judicial Attempts**

The judiciary has taken cognizance of the plight of domestic workers in the absence of concrete labour laws to protect their rights. The Delhi High Court has attempted to fill this lacuna by recommending guidelines for the Child Welfare Committee<sup>92</sup> and the Delhi Commission for Women that,<sup>93</sup> inter alia, grant some social security to domestic workers. The two bodies have been granted the power to direct the employer or the placement agency to: grant compensation to the domestic worker in cases of severe injuries caused during employment and provide medical assistance to domestic workers, based on complaints made by a domestic worker, his guardian or employer.<sup>94</sup> However, these guidelines, which have been adopted through executive orders,<sup>95</sup> are under legislations focusing on women (in Delhi) and children,<sup>96</sup> restricting the number of domestic workers that they could be applicable to. Further, the limited social security is available only after filing complaints with the prescribed authorities and no automatic right of social security is bestowed upon the worker. Hence, this is another piecemeal attempt at protecting domestic workers.

### **(d) Legislations in the Pipeline**

Extant legislations in India, regulating domestic workers, are woefully inadequate in addressing their concerns. The government has undertaken a complete

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<sup>89</sup> *Id.*, Section 15(1).

<sup>90</sup> Meena Menon, Ground Realities for Domestic Workers, *THE HINDU* (Jan. 13, 2012), <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/ground-realities-for-domestic-workers/article2797533.ece>.

<sup>91</sup> Surendra P. Gangan, Now, Maharashtra Domestic Workers to Get Benefits of Minimum Wages Act, *THE HINDUSTAN TIMES* (Aug. 29, 2013), <http://www.hindustantimes.com/mumbai/now-maharashtra-domestic-workers-to-get-benefits-of-minimum-wages-act/story-W69wX4CrZVqMpuZBT-EdN7H.html>: 2.29 lakh out of 11 lakh workers, i.e. 20% of domestic workers are registered with the Board as on June 30, 2013.

<sup>92</sup> Constituted under § 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>93</sup> Constituted under § 3 of the Delhi Commission for Women Act, 1994.

<sup>94</sup> *Bachpan Bachao v. Union of India*, 2010 SCC OnLine Del 4613 : (2011) 177 DLT 198.

<sup>95</sup> Government of National Territory of Delhi, Labour Department, Order No. Addl. LC/Misc(2)/12/Lab/Part File/1438, September 25, 2014.

<sup>96</sup> *Id.*

overhaul of the labour regime in India under which the multiple Central labour laws in the country will be amalgamated into four Labour Codes. The Draft Labour Code on Social Security and Welfare (“the Code”) has been released.<sup>97</sup> The most important change brought about, with respect to domestic workers, is their recognition as employees<sup>98</sup> and the recognition of the household as a workplace.<sup>99</sup> The Code envisages an apex body, the National Council, which shall act as the supervisory and monitoring body for the social security schemes that are to be framed by the Central and State Governments.<sup>100</sup> Boards at the State level are to be responsible for registration of workers and placement agencies and collection of contributions.<sup>101</sup> A Central Board shall provide technological support and co-ordinate the functioning of the State Boards.<sup>102</sup>

Obligations imposed on the households include payment of employer’s and worker’s contributions, filing of return-cum-challan, and maintenance of registers of records.<sup>103</sup> Further, rights of inspection of employer’s premises under the Act include inspection of households.<sup>104</sup> Penalties have been prescribed for non-compliance with obligations, including creation of cognizable offences.<sup>105</sup>

Nuances, such as the schemes applicable to domestic workers, are to be framed by the State or Central Governments,<sup>106</sup> while the manner of registration and grievance redressal mechanism are left for determination by the Boards.<sup>107</sup> Consequently, it is not currently feasible to gauge the efficacy of the Code for domestic workers. However, certain flaws in the Code need to be addressed. First, the Code fails to set up a tri-partite Board at the district level, resulting in over-centralisation. This will reduce the accessibility of the entire system. Secondly, with respect to mandatory registration, records, inspection, and so on, the Code appears to be regulating the household as any other commercial entity. If the regulations are too stringent and do not allow for special exemptions for the household, they might negatively impact the demand for domestic workers,<sup>108</sup> thereby adversely affecting the very section of people it seeks to benefit.

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<sup>97</sup> Draft Labour Code.

<sup>98</sup> *Id.*, § 2.42.

<sup>99</sup> *Id.*, § 2.140.

<sup>100</sup> *Id.*, § 3.1, 3.2.

<sup>101</sup> *Id.*, § 3.8

<sup>102</sup> *Id.*, § 3.5

<sup>103</sup> *Id.*, § 37.

<sup>104</sup> *Id.*, § 113.2(f)(ii).

<sup>105</sup> *Id.*, § 156(1).

<sup>106</sup> *Id.*, § 24.

<sup>107</sup> *Id.*, § 11.4 (Registration is to be done in the manner prescribed by the bye-laws framed by the Central Board), § 3.5(h).

<sup>108</sup> See Tom Hertz, *The Effect of Minimum Wages on the Employment and Earnings of South Africa’s Domestic Service Workers, Trade and Uneven Development: Opportunities and Challenges*, Annual Forum (2005).

Given the involvement of households, privacy concerns, and other unique difficulties in the implementation of any scheme concerning domestic workers, merely extending the application of a generalised labour regulation will not be effective. A niche statute is a *sine qua non* for any substantial improvement in the status quo of domestic workers.

## V. BEST INTERNATIONAL PRACTICES

An ILO study, covering one hundred and sixty-three countries, identified that 43% of the countries already provide for some form of social security for domestic workers.<sup>109</sup> Despite this, 90% of domestic workers globally continue to be outside the realm of actual protection.<sup>110</sup> Even developed and high-income countries have not been able to formulate a successful structure which covers most, if not all, domestic workers.<sup>111</sup> Two important conclusions may be drawn from this data: first, merely having some legislation in place is not sufficient to ensure protection for domestic workers; and, secondly, no country has been able to formulate and implement a holistic legislation, which affords complete coverage to domestic workers. In the absence of any model legislation, it would be useful to analyse the different strategies employed by nations across the world in order to identify aspects which make social security more functional, as well as highlight those aspects which may be acting as barriers.

### A. Types of social security

A primary question to be considered while extending social protection is to determine who would bear the cost of social security for domestic workers. This would depend on the type of social security: social assistance, social insurance, or employer's mandate.<sup>112</sup> In social assistance, the entire cost is borne by the State. Social insurance is characterised by pooling of resources and the cost is borne by all those who participate in the scheme. Generally, both the employer and the employee contribute to the scheme. Employer's mandate shifts the entire cost upon the employer.

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<sup>109</sup> ILO Report, *supra* note 37, at ix.

<sup>110</sup> *Id.*, at ix.

<sup>111</sup> *Id.*, at 68: For instance, 60 percent of domestic workers in Italy, 58 percent in Chile, and 30 percent of domestic workers in both France and Spain are outside social security schemes.

<sup>112</sup> Kwong-leung Tang & James Midgley, The Origins and Features of Social Security, in *SOCIAL SECURITY, THE ECONOMY AND DEVELOPMENT* 23, 24, 27, 34 (Kweong-leung Tang and James Midgley eds., 2008).

### (a) *Social Assistance*

Hong Kong and Indonesian laws have provided for universal social assistance schemes for those, whose income is insufficient to meet basic needs.<sup>113</sup> India itself has some social assistance schemes, like the Agricultural Labour Pension scheme of the Kerala Government, under which a sum of Rs.1000 is provided as monthly pension to agricultural workers.<sup>114</sup> Based on the coverage of the scheme,<sup>115</sup> the success of the scheme cannot be doubted.

However, considering the sheer number of domestic workers in India,<sup>116</sup> the scheme loses its feasibility with respect to domestic workers due to the financial burden it would impose upon the State. The experience in Hong Kong and Indonesia bear witness to this as the failure of social assistance scheme is evident in those countries.<sup>117</sup> These schemes have failed for two broad reasons: first, the amount of benefit is inadequate to raise the poor out of poverty and instead pushes them into a poverty trap; and, secondly, the persons covered by the scheme do not have easy access to them.<sup>118</sup>

### (b) *Employer's mandate*

Hong Kong has excluded domestic workers from social insurance regimes and has only granted them protection under employer's mandate.<sup>119</sup> All medical expenses of the domestic worker, whether an employment injury, occupational

<sup>113</sup> Social Security Administration, US, Hong Kong, Social Security Programs Throughout the World: Asia and the Pacific, 2010, <https://www.ssa.gov/policy/docs/progdsc/ssptw/2010-2011/asia/hongkong.html>: Comprehensive Social Security Assistance Programme in Hong Kong; The Trust Women Conference, A Landscape Analysis of Domestic Workers' Rights and ILO Convention 189, 124 (2012): All the domestic laws of Indonesia concerning domestic workers and the efficacy thereof have been discussed.

<sup>114</sup> Government of Kerala, Social Welfare Pensions, <https://welfarepension.lsgkerala.gov.in/SchemesEng.aspx>.

<sup>115</sup> Government of Kerala, State wise details of Social welfare pensioners, <https://welfarepension.lsgkerala.gov.in/Reportseng.aspx> (last visited May 01, 2017): 4,97,667 pensioners are covered under the scheme as of 21/09/2016.

<sup>116</sup> 52.6 m domestic workers worldwide, highest in Asia: ILO, The Hindu Business Line (January 10, 2013), available at <http://www.thehindubusinessline.com/economy/526-m-domestic-workers-worldwide-highest-in-asia-ilo/article4294195.ece>: ILO estimated that there were 4.2 million domestic workers in India in 2004-05.

<sup>117</sup> International Comparison, *supra* note 113; Coming Clean, Justice Centre (2016), <http://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>: Discusses the forced labour like working conditions of domestic workers in Hong Kong; Dr. Wong Hung, Creating Poverty Trap: The Failure of Social Security in Alleviating Poverty in Hong Kong, Division of Social Studies, City University of Hong Kong, [https://web.swk.cuhk.edu.hk/~hwong/pubfile/journal/2000\\_Failure\\_of\\_Social\\_Security\\_in\\_Alleviating\\_Poverty\\_in\\_HK\\_NONFINAL\\_APJSW.pdf](https://web.swk.cuhk.edu.hk/~hwong/pubfile/journal/2000_Failure_of_Social_Security_in_Alleviating_Poverty_in_HK_NONFINAL_APJSW.pdf).

<sup>118</sup> *Id.*, Creating Poverty Trap.

<sup>119</sup> Hong Kong Social Security, *supra* note 113.

disease, or otherwise, have to be paid for by the employer. Additionally, based on the term of service and reason for termination, the employer may be liable to make severance payment or long service payment to the domestic worker.<sup>120</sup> This system does not depend on the employer fulfilling his duty to register the employee. Instead, state intervention occurs only when the employer does not make requisite payments; the employee can make claims before the requisite authorities.<sup>121</sup>

Employer's mandate imposes an extremely heavy burden on each employer, thereby tremendously increasing the cost of employing domestic employees. Further, the efficacy of this model is contingent upon the employee claiming his right before a court or a tribunal. The legal awareness of the domestic workers<sup>122</sup> and the judicial system are currently not equipped to bear this burden.<sup>123</sup> This drawback is not only limited to Hong Kong where the legislation has abysmally failed as domestic workers continue to work under conditions of forced labour.<sup>124</sup> Even if stringent methods of implementation are used, it is likely that the increased cost would only result in a sharp drop in employment in the sector. Further, employer's mandate is generally used to cover only work-related injuries<sup>125</sup> and the burden of other benefits, such as maternity, sickness, dependents' benefit, pension, etc., cannot be imposed on the employer.

### (c) *Social Insurance*

The most common type of social security adopted by different countries is that of social insurance. In order to ensure compliance under such scheme, the State requires records of all employment relations, including records of domestic workers with multiple employers, the individual contributions which the employer is liable to make, any changes in employment relations, and so on. This makes

<sup>120</sup> Employment Ordinance 38 of 1968 (Hong Kong).

<sup>121</sup> *Id.*: Claims may be made before Registrar of the Minor Employment Claims Adjudication Board and the Registrar of the Labour Tribunal for employment injury. Commissioner has the power to determine sum to be paid.

<sup>122</sup> GOI Monitor, India's domestic worker: down on her knees and mostly out, Aug. 07, 2013, <http://www.thealternative.in/society/indias-domestic-worker-down-on-her-knees-and-mostly-out/>.

<sup>123</sup> See Sonja Fagernäs, Labour Law, Judicial Efficiency and Informal Employment in India, Centre for Business Research, University of Cambridge Working Paper No. 353: In May 2000, there were 5,33,038 cases pending in the Indian Labour Courts, out of which 28,864 had been pending for over 10 years.

<sup>124</sup> Forced Labour, *supra* note 117.

<sup>125</sup> The Commonwealth of Massachusetts, Office of the Attorney General, Legal Rights of Domestic Workers, available at <http://www.mass.gov/ago/docs/workplace/domestic-workers/dw-notice-of-rights.pdf>: Employers' mandate is used only for work related injuries. There is a social insurance scheme for other benefits.

registration of all domestic workers mandatory.<sup>126</sup> Countries like France<sup>127</sup> and Spain,<sup>128</sup> which have a relatively high coverage of domestic workers under social security, have opted for coverage under a regime of social insurance.

Out of the 3 main schemes generally used in the context of domestic workers, that of social insurance seems the most efficient as it distributes the cost of social insurance. The large number of domestic workers in India will work to the advantage of the scheme as it would mean that there would be a huge pool of funds to draw from. The State's burden would be to employ supplementary policies to ensure that the employer registers the domestic worker and pays the contributions on time. Countries with high coverage have employed different mechanisms to ensure this, a combination of which may be used in India. These strategies will be discussed below.

## B. Mandatory coverage

The ILO report strongly recommends mandatory coverage of domestic workers under social security as opposed to voluntary coverage.<sup>129</sup> It found that the highest rates of effective coverage are associated with countries that have opted for a mandatory scheme.

<sup>126</sup> Employing people to help at home, THE CONNEXION (2009), <http://www.connexionfrance.com/home-employment-hiring-cleaner-handyman-nanny-cheque-emploi-france-news-article.html>: France mandates registration of all domestic employees by the employer irrespective of the nature of the domestic worker live-in, part-time, casual or otherwise; Developments in law and Practice 2012, International Labour Organisation, Spain approves new regulations for domestic employees (2012), [http://www.ilo.org/wcmsp5/groups/public/@ed\\_protect/@protrav/@travail/documents/publication/wcms\\_173686.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_173686.pdf): Spain imposes on the employer the duty to register all domestic workers with the social security authorities from the first hour of employment; Christopher Howard, THE NEW GOLDEN DOOR TO RETIREMENT AND LIVING IN COSTA RICA, 158 (2007): Costa Rica allows a period of one week for registration and the employer's obligations on termination of employment do not arise if the employer terminates employment during the trial period of one month.

<sup>127</sup> Employing people to help at home, THE CONNEXION (2009), available at: <http://www.connexionfrance.com/home-employment-hiring-cleaner-handyman-nanny-cheque-emploi-france-news-article.html>: Offers a comprehensive explanation of the process of employing domestic help in France ; International Comparison, *supra* note 113, at 50-52: Offers a comparison of the legal provisions relating to domestic workers in France and obligations under ILO Convention No. 189.

<sup>128</sup> Developments in law and Practice 2012, International Labour Organisation, Spain approves new regulations for domestic employees, (2012), available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_protect/@protrav/@travail/documents/publication/wcms\\_173686.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_173686.pdf).

<sup>129</sup> ILO Report, *supra* note 37, at 13: El Salvador and Mexico have introduced voluntary social security schemes. However, they have not been able to ensure adequate coverage. Coverage is as low as 1.9 percent in 2012 and 0.1 percent in 2011 in the two countries respectively. The study also points out that in recent times, some countries which earlier had voluntary coverage have now opted for mandatory coverage owing to the inefficiency of the former.

In India, when the well-off were voluntarily encouraged to give up LPG subsidies, less than 4% of the people opted for the scheme.<sup>130</sup> A voluntary scheme for domestic workers in India would be equally ineffective as employers in most situations aim to extract maximum labour from domestic workers at minimum cost. Voluntary schemes, like the Public Provident Fund Scheme,<sup>131</sup> can continue to supplement, but cannot be a substitute for, mandatory schemes.

### C. Inspection of Household Premises

In case of labour laws, the most commonly used method for ensuring implementation is to give Labour Inspectorates the power to inspect the premises. However, in case of domestic employment, allowing Labour Inspectorates such power would amount to an intrusion into the private space of the family.<sup>132</sup> Despite such privacy concerns, ILO Convention prescribes that Labour Inspectors ought to be given access to domestic premises, albeit with appropriate conditions which give due respect to the privacy of the family.<sup>133</sup>

France has tackled these privacy concerns by allowing the householder the discretion to let the Labour Inspector enter his home. Spain, on the other hand, takes away the discretion from the householder and places the same into the hands of the judiciary, provided the Labour Inspector is able to discharge the burden that such inspection is intended to enable monitoring related to potential proceedings before social courts. South Africa also allows for an alternate process of distributing requests in the householders' mailboxes for granting access to their households. Jordan has linked the system of household inspection to dispute resolution.<sup>134</sup> In the event of a complaint or information regarding non-compliance, the Ministry of Labour summons the employer and the domestic worker to resolve the dispute amicably. Inspection of household premises is mandated only in cases where an examination of working conditions is required.<sup>135</sup>

While the household ought to be protected from undue inspections by Labour Inspectors, inspection ought to be permitted in certain cases to protect the interests of subjugated domestic workers, particularly live-in workers who may be unable to even step out of the employers' households. Innovative procedures, like

<sup>130</sup> No LPG Subsidy for Taxpayers who Earn Over Rs 10 Lakh Annually: Govt., THE INDIAN EXPRESS (Dec. 29, 2015), <http://indianexpress.com/article/india/india-news-india/no-subsidised-lpg-for-those-with-annual-income-over-rs-10-lakh/>.

<sup>131</sup> Bank of India, Public Provident Fund Rules, available at: [http://www.bankofindia.co.in/pdf/PPFRules\\_14%20.pdf](http://www.bankofindia.co.in/pdf/PPFRules_14%20.pdf).

<sup>132</sup> Labour inspection and other compliance mechanisms in the domestic work sector: Introductory guide, International Labour, Office, Geneva, 20 (2015).

<sup>133</sup> Art. 17, ILO Convention No. 189.

<sup>134</sup> Regulation No. 90/2009 (Jordan).

<sup>135</sup> *Id.*: Inspection is ordinarily done with the permission of the householder. The Ministry of Labour, however, has the power to take measures if the householder denies permission.

those adopted by Jordan or South Africa, can be used to prevent undue harassment to the employer.<sup>136</sup>

## D. Dispute Resolution

ILO Convention has recognised dispute resolution as an important part of protecting domestic workers.<sup>137</sup> Much like Jordan, there is an increasing trend towards introducing conciliatory dispute resolution processes instead of resorting to enforcement mechanisms. In South Africa, the Commission for Conciliation, Mediation and Arbitration has been set up, where the Commissioner first tries to resolve the dispute through conciliation, failing which the parties may choose to arbitrate the matter.<sup>138</sup> Hong Kong offers free conciliation services for resolving disputes relating to employment laws.<sup>139</sup>

In India, considering the already existing burden on the labour courts,<sup>140</sup> it would be far more suitable to set up a separate body for dispute resolution catering to domestic workers. Further, the process could be made free of cost, at least for the domestic worker.

## E. Unionisation

The role of unionisation in the protection of labour interests is undisputed.<sup>141</sup> It gives workers the opportunity to demand and further their rights. It is imperative for live-in domestic workers, who are otherwise isolated due to the typical nature of their work, to have a vehicle that allows them to converge their interests and gain a voice in policy-making. Most European countries have successfully implemented collective bargaining as a means of regulating the employer-employee

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<sup>136</sup> See The Electricity Act, 2003, §135(3): No inspection of domestic premises is permitted between sunset and sunrise except in the presence of an adult male member of the house. Similar guidelines could be put in place with respect to inspection.

<sup>137</sup> Art. 16, ILO Convention No. 189: "Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally."

<sup>138</sup> Sjöberg, E., Enforcement of laws regulating domestic work: A case study of South Africa. Master thesis, Faculty of Law Lund University, 37 (2011), <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=2158754&fileId=2164686>.

<sup>139</sup> Government Of Hong Kong, How to Seek Voluntary Conciliation Service for Free, <http://www.gov.hk/en/residents/employment/employee/conciliation.htm>.

<sup>140</sup> See Sonja Fagernäs, Labour Law, Judicial Efficiency and Informal Employment in India, Centre for Business Research, University of Cambridge Working Paper No. 353: In May 2000, there were 5,33,038 cases pending in the Indian Labour Courts, out of which 28,864 had been pending for over 10 years.

<sup>141</sup> See WEIGO, Domestic Workers Around the World: Organising for Empowerment Christine Bonner Women in Informal Employment: Globalizing and Organizing (April 30, 2010).



relationship, while Asian countries are still struggling to effectively extend this right to domestic workers.<sup>142</sup>

However, merely recognising the right of domestic workers to unite is not sufficient by itself.<sup>143</sup> The threat of losing their jobs is far greater for domestic workers due to the large supply of labour. Further, domestic workers often develop close personal relationships with their employers, which makes them reluctant to indulge in collective bargaining actions against the employers.

## F. Legal Awareness

One of the most important pre-requisites to ensure compliance is for the domestic workers to be aware of their rights and for the employers to be aware of their duties.<sup>144</sup> Paraguay saw some success in the form of increased registration of domestic workers due to efforts to spread legal awareness.<sup>145</sup> The domestic workers' unions, together with the support of the State and the ILO, started a massive campaign, which targeted both urban and rural areas, employers, and employees. Messages were adapted to target specific audiences by tailoring the words and choosing the language accordingly. Information days are organised by various countries to reach out to people.<sup>146</sup>

The role of imparting legal awareness, especially in the first few years of introducing a social security scheme, cannot be over-emphasised.

<sup>142</sup> KRISTIN CARLS, DECENT WORK FOR DOMESTIC WORKERS, THE STATE OF LABOUR RIGHTS, SOCIAL PROTECTION AND TRADE UNION INITIATIVES IN EUROPE, (2012): Discusses the role of unionisation in Spain, Italy, Germany and Ireland. Asia Pacific Forum on Women, Law and Development, The Right to Unite: A Handbook on Domestic Worker Rights across Asia (2010): Discusses unionisation in Asian countries of Malaysia, Bangladesh, India, Philippines, Indonesia, Hong Kong, Japan and so on. Philippines has however seen unions playing an effective role in protecting domestic workers.

<sup>143</sup> See Claire Hobden, Domestic workers organize – but can they bargain? (2015), [http://www.ilo.org/wcmsp5/groups/public/@ed\\_protect/@protrav/@travail/documents/publication/wcms\\_345704.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_345704.pdf) ; Worker Rights across Asia, Asia Pacific Forum on Women, Law and Development (APWLD): While the law in Hong Kong recognises this right of the workers, the government neither recognises nor encourages collective bargaining, thereby rendering the right to organise redundant.

<sup>144</sup> See Asian Development Bank, Legal Empowerment for Women and Disadvantaged Groups (2009): It discusses the impact of legal awareness on the ability of disadvantaged groups to assert themselves.

<sup>145</sup> International Labour Office, Geneva, Rights to Social Protection: Domestic Workers Are No Exception, International Labour Organisation, Geneva (May 06, 2014), [http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS\\_242164/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_242164/lang-en/index.htm): A direct result of the campaign was an 8.7 percent increase in registration of domestic workers to social security schemes.

<sup>146</sup> International Labour, Office, Geneva, Labour inspection and other compliance mechanisms in the domestic work sector: Introductory guide, 20 (2015): Information weeks or days are organized in many other countries, including France, India, Lithuania, Romania, Spain and Vietnam. Special days for occupational safety and health or child labour are also held in, among others, Bulgaria, Cuba, Morocco, Portugal and Ukraine. The media are often involved, as in China, Cuba, El Salvador, France, Mauritius, Portugal and Romania.

## G. Fiscal Incentives

Financial incentives are an effective way of ensuring compliance. In France, the employer is allowed to deduct 50% of the total cost of wages and social security contributions from his tax liability, subject to a specified ceiling.<sup>147</sup> In Ecuador, employers who make timely contributions to social security schemes are exempted from paying certain administrative costs for the next 3 months.<sup>148</sup> In Costa Rica, financial incentives exist in the form of government subsidies as the State pays a part of the social security contributions for the domestic employees.

## H. Imposition of penalties

Another method adopted to ensure compliance is introducing penal provisions on non-compliant employers. Argentina and Philippines charge interest on the overdue amount of contributions.<sup>149</sup> Apart from financial penalties, Ecuador prescribes imprisonment of three to seven days if the payment is still overdue after receiving notice of overdue contributions.<sup>150</sup>

While monetary penalties may be introduced to encourage employers to make contributions in time, they should not be too hefty. Penalties, like imprisonment, would be too harsh for overdue contributions and should not ideally be imposed on households, lest it reduces demand for domestic workers and becomes counter-productive.

## I. Other Innovative Strategies

### (a) *Use of service cheques*

Service vouchers are known to ease the transition of an informal economy to a formal one by making the process of payment of contributions easier.<sup>151</sup> For instance, France has introduced the ‘Cheque Emploi Service Universel’ (‘CESU’),<sup>152</sup> which seeks to reduce employer’s transaction cost by calculating and disbursing contributions to social security schemes on behalf of the employer.

<sup>147</sup> ILO Report, *supra* note 37, at 36.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> International Labour Office Geneva, Decent work for domestic workers, International Labour Conference, 99th Session 42 (2010).

<sup>152</sup> ILO Report, *supra* note 37, at 36: Also discusses a similar system in Belgium where employment must be through accredited companies.

### ***(b) Presumption of employment***

Argentina has adopted a unique system for ensuring compliance.<sup>153</sup> For all households whose income is above a certain level and whose assets exceed a certain amount, the body responsible for collecting taxes presumes that the household is an employer of a domestic worker, notifies the household of such presumption, and charges the respective social security contribution.<sup>154</sup> It is for the household to then rebut such presumption. Instead of imposing penalties like imprisonment for non-compliance, this appears to be a far more feasible strategy and less excessive. Undoubtedly, the efficacy of such a presumption would be affected by the large number of persons in the country who evade taxes.<sup>155</sup>

### ***(c) Establishment of Welfare Fund Boards***

In India, Kerala has formed a Welfare Fund Board for construction workers with tri-partite representation- the government, construction workers, and their employers.<sup>156</sup> The primary purpose of the Boards is to disburse benefits to the construction workers.<sup>157</sup> The main source of fund is cess payable to employers on the cost of construction. The success of the scheme is evident from its wide coverage.<sup>158</sup> However, one of the major drawbacks of the scheme is that the burden of collection of cess is upon the Labour department, which is already over-burdened with implementation of existing labour legislations.<sup>159</sup> This reduces the potential income of the Fund, thereby reducing the benefits that may be given to the construction workers. Welfare Boards, specific to a class of workers, allow for better maintenance of records, providing a point of contact for both employers and employees and ensuring targeted utilization of funds for the benefit of the worker.

<sup>153</sup> ILO Report, *supra* note 37, at 37: This was introduced under a new 2013 legislation for domestic workers which brought them at par with regular workers. It is noteworthy that this legislation was a result of pressure from union representatives and domestic workers' federations.

<sup>154</sup> This presumption allows them to inspect such households where there is no declared domestic worker but which is presumed by law to have a domestic worker.

<sup>155</sup> See Blackmoney: Govt unearths indirect tax evasion of Rs 50,000 crore in two years, THE INDIAN EXPRESS (Oct. 09, 2016), <http://indianexpress.com/article/business/economy/blackmoney-govt-unearths-indirect-tax-evasion-of-rs-50000-crore-in-two-years-2793085/>.

<sup>156</sup> The Kerala Construction Workers' Welfare Fund Act, 1989, § 16.

<sup>157</sup> Benefits include: pensions, death benefit, accident/disease benefit, health and maternity benefit, housing assistance, family pension, and grants for marriage and education of the children: cash awards and scholarship, entrance coaching fees, old age home for construction workers above the age of 60 years.

<sup>158</sup> Dr Abdul Nasar & Dr Muhammed Basheer Ummathur, Comparison of Construction Workers' Welfare Fund Boards in Tamil Nadu and Kerala, VIII(1) INDIAN J. COMMERCE & MANAGEMENT STUDIES, (2016).

<sup>159</sup> *Id.* There are only two inspectors in the Labour department to ensure the implementation of about 20 laws in around 250 institutions in a district.

## J. Cheap Credit

Different countries offer different combinations of the nine main branches of social security identified by ILO.<sup>160</sup> Apart from these, considering the difficulties that a domestic worker faces in obtaining credit from the market, the social security scheme in countries like Philippines and Costa Rica provide access to loans to registered domestic workers.<sup>161</sup> If the scheme fails to anticipate all the concerns of the worker, such loans can help tide the worker through difficult times.

In terms of the benefits offered under the social security scheme, the more the benefits offered under the scheme, the better it will be at offering protection to domestic workers. However, this has to be balanced with respect to the financial capacity of the State and that of the domestic employer as well. For India to be able to evolve a scheme that can be effectively implemented without imposing harsh conditions on the employer, the best strategies of different nations will have to be selected and tailored to suit Indian conditions.

## VI. THE PROPOSED SOLUTION

Domestic workers face major economic, physical and sexual harassment with little or no recourse due to the cumulative impact of lack of specialised legislation, lack of awareness of applicable legislation, and inefficient implementation of existing legislation. After comprehensively analysing the major problems faced by domestic workers<sup>162</sup> and the international standard practice,<sup>163</sup> it is evident that we need a separate legislation and regulatory mechanism addressing the problems of domestic workers.

Ensuring access to social security is mandatory to reduce economic and social vulnerabilities of the domestic worker. At the same time, to ensure access of domestic workers to social security, additional measures need to be introduced, which reduce barriers to implementation of social security, like over-supply of workers, lack of dispute resolution mechanisms, and so on. Consequently, social security and other measures for improving the lot of domestic workers must be tackled simultaneously.

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<sup>160</sup> Social Security (Minimum Standards) Convention, 1952 (No. 102), International Labour Organisation: Lays down the minimum standard for the level of social security benefits and the conditions under which they are granted. It covers the nine principal branches of social security, namely medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits; See ILO Report, *supra* note 37.

<sup>161</sup> See ILO Report, *supra* note 37, at 33.

<sup>162</sup> *Infra* Part III.

<sup>163</sup> *Infra* Part V.

## A. Substantive Law Provisions

### (a) *Establishment of Welfare Boards*

In line with the initiatives taken by the Tamil Nadu,<sup>164</sup> Maharashtra,<sup>165</sup> and Kerala Governments,<sup>166</sup> we propose the establishment of Welfare Boards for domestic workers in every district. Given the number of domestic workers employed in the country, particularly in urban areas, it would be most suitable to have an independent Board, which specifically caters to domestic workers. The Boards should serve as the first point of contact for domestic workers. Registration of domestic workers should be made mandatory and the Board should have the power to impose fines on households employing unregistered domestic workers. Considering almost all urban homes have domestic workers, the initial stages would require the Board to reach out to individual homes and encourage compliance with the mandatory registration requirement.

Social security benefits<sup>167</sup> must be provided to domestic workers through the Boards. Benefits of applicable social security schemes, such as the RSBY scheme,<sup>168</sup> must be consolidated and brought under the purview of the Board. The Board would also be responsible for fixing hourly minimum wages,<sup>169</sup> providing limited emergency finance at low interest rates, and providing basic legal assistance to domestic workers. In addition to these functions, to tackle increasing automation of unskilled or low-skilled jobs, the Board would be responsible for providing additional skill training to domestic workers. The Board should focus on training them as cooks, gardeners, while simultaneously providing basic literacy and IT courses for empowering them. Additional functions of the Board would include providing cheap credit (as done in Philippines and Costa Rica),<sup>170</sup> which will also help to reduce the need for social security benefits by increasing the economic capabilities of domestic workers through alternative means.

### (b) *Funding for social security*

Funding should come from contributions by the domestic workers themselves and from imposition of an additional property tax as in Argentina.<sup>171</sup> A uniform

<sup>164</sup> *Infra* Part IV.

<sup>165</sup> *Infra* Part IV.

<sup>166</sup> *Infra* Part V, Establishment of welfare fund boards.

<sup>167</sup> The specific benefits conferred (for instance medical benefits, maternity benefits, marriage expenses, funeral expenses, pension, etc) would depend on an economic analysis of the nature of funds that is expected to be available to the Board for disbursal and the number of workers to be covered. The same is therefore outside the scope of this paper.

<sup>168</sup> *Infra* Part IV.

<sup>169</sup> Devolving the role of fixing minimum wages to a district level body would better account for differences in cost of living.

<sup>170</sup> *Infra* Part V, Cheap Credit.

<sup>171</sup> *Infra* Part V, Presumption of Employment: Property tax flows from a presumption of employment of domestic worker in every premises household and commercial.

tax of this nature would serve two purposes: first, the issue of collection of contributions from employers is tackled by strengthening the revenue collection system itself and without there being a need to create a special mechanism for collection of contributions from specific employers; and, secondly, such tax will not disincentivise the employment of domestic workers.

The Department of Economic Affairs noted in the Economic Survey 2016-17 that rates of property tax in India were comparatively quite low<sup>172</sup> and increase in property taxes constitutes an immediate scope for locally raising revenue.<sup>173</sup> Therefore, any additional burden will not be unreasonable.

### ***(c) Dispute Resolution***

Dispute resolution is a precarious topic in cases of domestic workers. Stringent or arduous dispute resolution procedures would discourage domestic households from engaging domestic workers. Globally, countries have admitted the need for a quick and simple dispute resolution process, predominantly based on conciliation as the ideal approach.<sup>174</sup> Therefore, we propose giving the Boards powers to resolve disputes between domestic workers and employers by conciliation. These powers may be expanded in future to include binding arbitration based on the success of the Boards.

In cases of serious instances of abuse, where conciliation fails or is not an adequate means of dispute resolution, the Board must also have the duty to assist domestic workers in approaching the courts by getting them in touch with the State Legal Services Authority.

### ***(d) Tackling the problems faced by live-in domestic workers***

Live-in domestic workers are in a precarious situation with characteristically limited social interaction. It renders them especially vulnerable to abuse by employers.<sup>175</sup> The practice of live-in workers is inevitably going to involve abusive behaviour and propagate discrimination.<sup>176</sup> It is, therefore, prudent to deter the use of live-in domestic workers through special provisions. This may be done through measures like notifying higher minimum wages and fixing working hours, monthly counselling sessions of live-in domestic workers with a social worker at the cost of the employer, creation of a provident fund account for the worker with contribution from the employer, and other such provisions. Not only

<sup>172</sup> Department of Economic Affairs, Ministry of Finance, Economic Survey 2016-17, Chapter 14 ¶305.

<sup>173</sup> *Id.*, at ¶325.

<sup>174</sup> Dispute Resolution, *infra* Part V.

<sup>175</sup> Jeanne Devos Organisation, Domestic Workers Information, [www.jeannedevos.org/JDenglish/teksten/Domestic%20workers%20info.doc](http://www.jeannedevos.org/JDenglish/teksten/Domestic%20workers%20info.doc).

<sup>176</sup> *Id.*

will these measures ensure adequate protection to live-in domestic workers, but would also be a disincentive for individuals to employ live-in domestic workers.

### **(e) *Regulating intermediaries***

The proposed definition of domestic workers will ensure that those employed through placement agencies will also have the right to avail welfare measures. Placement agencies must also be brought within the ambit of the proposed Welfare Boards by giving the power to the Boards to hold them jointly and severally liable in cases of non-registration of workers.

The problems posed by RWAs, on the other hand, can be successfully dealt with by encouraging unionisation of domestic workers.<sup>177</sup> When domestic workers are in a position to take collective action against RWAs without fear of economic insecurity, collective bargaining will be a useful tool to check arbitrary acts of the RWAs.<sup>178</sup>

### **(f) *Long-term measures***

In light of increasing automation and the discrimination against domestic workers, in the long term, the Government should institute a nationwide skill-training program that could provide an alternative to domestic work. Ensuring an alternate employment would reduce oversupply of domestic workers, which would swing the market forces in favour of domestic workers, dramatically improving the status quo.

## **B. Improving Regulatory Compliance**

### **(a) *Awareness***

Widespread public awareness of the law related to domestic workers is a recognised standard requirement. This requirement has often been neglected while extending current legal provisions to domestic workers.<sup>179</sup> While creating legislation or making policy changes concerning domestic workers, the State should

<sup>177</sup> *Infra* Part VI, Improving Regulatory Compliance.

<sup>178</sup> See Sohil Sehran, Domestic helps' union to boycott Noida's Mahagun Moderne Society, THE HINDUSTAN TIMES (July 19, 2017), <http://www.hindustantimes.com/delhi-news/domestic-helps-union-to-boycott-noida-s-mahagun-moderne-society/story-uYWcyNTXTPXvBz9b3igS8J.html> (last visited Oct. 23, 2017); Domestic Workers' Union called upon members to boycott a residential society when the RWA therein arbitrarily blacklisted a group of domestic workers. <http://www.hindustantimes.com/noida/noida-union-s-call-for-boycott-of-mahagun-society-by-helps-falls-on-deaf-ears/story-RITCHmaCAOWNMlnKHhaGkJ.html>: The call for boycott by the workers' union failed owing to fear of losing income among the workers.

<sup>179</sup> *Infra* Part IV: Most regulations regarding minimum wages and working conditions suffer from lack of awareness.

also necessarily include proper campaigns to extend awareness of the same beyond mere gazetted publication. While these are not alternatives to actual implementation, increased awareness may improve compliance as evidenced by the experience in Paraguay.<sup>180</sup> The State can seek the assistance of labour unions and NGOs for conducting large-scale awareness programmes to target different groups of workers and employers.

### **(b) Unionisation**

Unionisation is a recognised global practice to improve the bargaining power of domestic workers, which in turn improves wages and gives other economic benefits through the market mechanism.<sup>181</sup> The role of unions in the improvement of social security for domestic workers has also been adequately recognised.<sup>182</sup> In India, domestic workers, isolated through various factors including caste, religion, ethnicity, and so on,<sup>183</sup> have not been able to organise themselves into unions. The legislation, therefore, has to play a proactive role in organising domestic workers into unions. Boards may be tasked with the responsibility of organising and promoting unions of domestic workers. Not only can unions improve market wages and benefits available to domestic workers, it can also apply pressure on the state machinery to function properly and, in some cases, even act as an alternative to implementation by state machinery.<sup>184</sup>

## **VII. CONCLUSION**

In the long run, substantial changes in the policies of the Government vis-a-vis domestic workers are required. The intense competition among domestic workers<sup>185</sup> ought to be tempered and regulated. Otherwise, any regulation to formalise

<sup>180</sup> See Asian Development Bank, Legal Empowerment for Women and Disadvantaged Groups, (2009): It discusses the impact of legal awareness on the ability of disadvantaged groups to assert themselves.

<sup>181</sup> *Infra* Part IV.

<sup>182</sup> *Infra* Part IV; V. Krishnamurthy and R.P. Nair, International Labour Office, Geneva, The Welfare Fund for Construction Workers in Tamil Nadu, International Labour Office, Geneva, ESS Paper no. 18, 28 (2003): Refers to survey which identifies that the motivation of workers to join the Fund came from Unions; Lawrence Mishel and Matthew Walters, How Unions Help All Workers?, Economic Policy Institute (2003): This paper discusses the instrumental role played by unions and its necessity as a supplement to labour laws.

<sup>183</sup> See *supra* note 51, An Uncertain Glory: Discriminations on the basis of caste, class or religion in India are not independent of each other but reinforce each other. For example, domestic workers belonging to different religion might not form a union despite facing the same economic and social problem; *Rangaswami v. Registrar of Trade Unions*, 1960 SCC OnLine Mad 243 : AIR 1962 Mad 231.

<sup>184</sup> Rasika Dhavse, Organising Inside the Home, INDIA TOGETHER (April 2004); Meena Menon, Ground Realities for Domestic Workers, THE HINDU (Jan. 13, 2012), <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/ground-realities-for-domestic-workers/article2797533.ece>.; Neetha N., *supra* note 17, at 34.

<sup>185</sup> See Rajni Palriwala, *supra* note 16, at 105



the sector is rendered moot. For example, after minimum wages are notified, a demand for the same by a domestic worker would probably lead to her being replaced by someone who is willing to work for lesser wages. In order to preserve her new employment, the cheaper worker would be wary of the authorities seeking to impose minimum wages, thus, pushing the entire sector towards more informalisation and creating distrust for authorities. Threat of heavy penalties upon the employers for regulation of wages or working hours could also be counter-productive as it could disincentivise them from hiring domestic workers, replacing them by technology<sup>186</sup> or formal services, for instance, the replacement of cooks with tiffin or meal services.

While addressing concerns of domestic workers, those employed in rural/semi-urban households should also be taken into consideration.<sup>187</sup> Proper implementation of initiatives focusing on development of rural areas, like Mahatma Gandhi National Rural Employment Guarantee and Pradhan Mantri Gram Sadak Yojana, should reduce urban migration, consequently reducing the intense competition amongst domestic workers. Implementation of universal social security schemes such as food security, free healthcare, free education would be immensely beneficial for domestic workers, both in urban and rural areas.

The problems faced by domestic workers cannot be tackled in isolation. They are a part of larger issues and must be addressed as such. The specific legal provisions discussed in this paper for domestic workers must go hand in hand with other socio-economic welfare measures.

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<sup>186</sup> *Id.*

<sup>187</sup> An Uncertain Glory, *supra* note 51, at 151: For instance, insurance schemes such as RSBY could never act as an alternative to universal healthcare. These schemes greatly increase the cost of healthcare while also leading to neglect of rural areas.