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# Social Security of Domestic Worker, A Least Discussed Topic

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ADHIKANSH PARASHAR<sup>1</sup> AND ANKIT MISHRA<sup>2</sup>

## ABSTRACT

*Amongst all categories of the informal division, the stability and protection of indigenous workers form one of the most consequential provocations to labor laws. The implicit oppressiveness involved in the profession, along with the atypical variety of the work of domestic workers, makes them more vulnerable than other workers in the economy.*

*The complexities are correlated with the work being delivered within the household, originally for non-commercial intentions. The workspace is a private space, makes administration and implementation very finicky.*

*Domestic workers come from unprotected communities and underprivileged areas. The preponderance is poor, uneducated, untrained and does not recognize the metropolitan labor market. Their work is underrated, underpaid and inadequately monitored. Deficiency of decent wages, working conditions and defined work hours, brutality, exploitation, sexual harassment at workplace, deception at the hands of traffickers/employment agencies, driven migration, lack of welfare stratagems and lack of skill advancement avenues resulting in stagnation are some of the major issues that they face.*

*The lack of practical regulation and the notably relaxed nature of the services furnished by indigenous workers without any fundamental protection. In the event of any industrial uncertainty, they are willed at the commiseration of their employers. It is, therefore, quintessential to manifest a system of convivial security that can furnish sufficient protection to indigenous workers, with insignificant state involvement in the operations of the family.*

*This paper endeavors to provide ideas for such a scheme, which is revised to the eccentric aspects of domestic workers in India. It recognizes that widespread and remote schemes of the social security model insinuated are a decentralized model where social protection is blended with other important solicitudes such as merest wages, skill advancement, and heightening awareness and bargaining vigor of domestic workers. These suggestions have transpired after undertaking a study of subsisting judicial provisions for domestic workers in India and the most beneficial methods from numerous domains that have seen relative*

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<sup>1</sup> Student of K.L.E Society & Law College, Banaglore, India.

<sup>2</sup> Student of K.L.E Society & Law College, Banaglore, India.

*victories in rendering social security to indigenous workers.*

**Keywords:** *Domestic workers, social security, abuse of worker, stability of indigenous workers.*

## I. INTRODUCTION

A country, while sketching a strategy, must be attentive to its indigenous subtleties. Mimicking thriving policies of other lands or even aggregating most dependable global practices is questionable to prove efficient in the deficiency of due deference to internal deliberations.<sup>3</sup> Before-mentioned stratagems, heedless of ground realities, would typically encounter poor implementation or, worse, might lead to unfavorable consequences upon implementation.

The primary step towards formulating policy, or even drafting one, therefore, would be to place a finger on the area of focus that needs to be addressed and undertake a detailed analysis to draw a fine line between the specific issues that the said policy can address. Upon having done this, the pre-existing statutes need to be fully scrutinized to ascertain their shortcomings.<sup>4</sup> Thereafter, the stables global and indigenous practices should be discovered<sup>5</sup>.

Only after these said steps have been observed, a practical policy can be drafted which aptly pleads to the concerns raised by appropriating the best practice to surmount the intricacies that irk the existing regulations. Ultimately, as is the usual constitutional process, this outline policy must be released for strait-laced consideration involving all stakeholders.<sup>6</sup>

Domestic workers are amongst the most abused sections of workers<sup>7</sup> Amidst a thriving metropolitan middle class, the requirement for domestic workers is only increasing.<sup>8</sup> One of the most consequential difficulties for domestic workers in the absence of economic surety, which the essence of their job constrains them to. In the event of any sickness, distress, or economic demands of their family, they are left at the commiseration of their employers, who provide them aid only as a favor. The condition is more critical for those workers who are coerced to maintain working in sadistic and hostile spaces for the fright of squandering their

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<sup>3</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>4</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.

<sup>5</sup> International Labor Office, Social Protection Department, Geneva 2016

<sup>6</sup> Stakeholder and Citizen Roles in Public Deliberation, 9(2) J. PUB. DELIBERATION 1, 9-11 (2013).

<sup>7</sup> [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>8</sup> [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)

only root of income.<sup>9</sup> Considering the abundance of workers who are occupied in domestic work and are currently banished from such fundamental protection, the formulation of satisfactory schemes for leading them within the lapel of social security is a noble intent.

However, owing to the outlandish and distinct characteristics of their work, the regulation of indigenous workers is laden with complexities.

In India, efforts have extensively been strewed. We need explicit regulations that can undertake the essential predicaments unique to indigenous workers and lessen the obstacles correlated with the implementation of labor laws in this sector.

## **II. DEFINITION OF A DOMESTIC WORKER**

In welfare law, entitlement to privileges regularly depends undividedly on the definition clauses. A remarkable class of workers may be refused privileges following an Act because of a restricted definition clause. It is, therefore, imperative to maximizing the extent of the definition and embrace, within its domain, the assorted ventures that compound domestic work. Elongating the interpretation of the "domestic worker" surpassing its traditional understanding may additionally extend security to workers who break outside the traditional definition but are in as considerable need for reassurance. Furthermore, a comprehensive definition will also help in the much larger accumulation of statistics, as classes of workers will not be disbarred based on technicalities of the definition

Besides, it is an international practice to render a broad suggestive list of the numerous services that compose the domestic job. This helps in enlisting viding transparency on certain everyday chores<sup>9</sup> that are considered domestic work. Without the constraints of an exhaustive definition

It must also be circumscribed whether "domestic work" ought to be restricted to work which is bounded rigorously to the household or should lengthen to workers conducting domestic work<sup>10</sup> in an unregulated financial enterprise. The Draft Labor Code for Social Security and Welfare 2017, presented as a Bill by the government, has introduced a comprehensive definition of workers that have opted for the following definition by utilizing the terms "employed in any household or similar establishments" Nevertheless, the word "similar establishments"<sup>11</sup> has a particular meaning that might restrict the extent of the definition<sup>12</sup>.

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<sup>9</sup> 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).

<sup>10</sup>Art. 2, Employment Act of Singapore: It provides for work done "in or in connection with a household".

<sup>11</sup> Draft labor code for Social Security and Welfare 2017 section 2.(39)

<sup>12</sup> Id, section 2.(48) read with 2.(45)

Consequently, we propose an indefinite interpretation, which does not strive to restrict domestic workers spatially.

Based on the preceding reflections, this paper suggests the resulting definition of indigenous workers: A domestic worker is every individual, whether contracted directly or discursively, associated in household work including cooking, sanitation, landscaping, caretaking of infants, aging or ill persons, chauffeurs, driver, laundry, and being a guard. Domestic work only suits the kind of work and does not require situational obstructions, such as household premises.

### **III. ISSUES OF DOMESTIC WORKERS**

The quandaries encountered by domestic workers today are extensive and distinct. To guarantee efficient sureties against them, we must have an absolute understanding of the vulnerabilities of the workers and their difficulties. Ideally, they should be granted economic incentives on a subjective examination of their performance, skill, i.e. highly skilled individuals. In such a situation, the difficulty confronted by them can also be bartered subjectively through prosecution. In India, due to a sluggish and overburdened judiciary, litigation is of tiny pragmatic aid.

First, the absence of common agreement, united with large manpower of workers<sup>13</sup>, has resulted in cheap pays for domestic workers which completely serves the almost prosperous employer at the expense of the unprotected domestic workers<sup>14</sup>. Most workers are paid pitiful wages despite hard-working hours.<sup>15</sup>

Both, part-time and live-in workers, dissipate out due to the lack of common bargaining. Nevertheless, the stakes are hovering for the live-in workers as they are wholly reliant on the employer for, both, financial and non-monetary means. Provisions concerning fundamentals like meals and accommodation, working hours, overtime and additional such issues form an integral part of their profession, which cannot be seized completely by regulations on financial considerations. In this position, the off-time workers, in common, are comparatively less susceptible than live-in ones as the fleeting period spent in numerous households diminishes the overall vulnerability and dependence on one singular employer for maintenance.<sup>16</sup>

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<sup>13</sup> Neetha N. & Rajni Palriwala, *The Absence of State Law: Domestic Workers in India*, 23(1) CAN.(2011); Renuka Ramanujam, *Influx of Tribal Domestic Workers: India*, <http://wcd.nic.in/Schemes/research/Influx06052015.pdf>.

<sup>14</sup> [http://www.livemint.com/Politics/XERWJTdOp4JhFzp6mEXjWK/Wholl-cry-for-domestic-Tandon, Domestic Workers: How to Give Them Their Due 14-19 \(Centre](http://www.livemint.com/Politics/XERWJTdOp4JhFzp6mEXjWK/Wholl-cry-for-domestic-Tandon, Domestic Workers: How to Give Them Their Due 14-19 (Centre)

<sup>15</sup> Rajni Palriwala, *supra* note 16, at 111-113.

<sup>16</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).

Therefore, while these concerns could emerge in case of part-time workers, its pertinence is slightly subsequent when examined with financial considerations.

Furthermore, there is an insufficiency of skill advancement in indigenous workers.<sup>17</sup> To competently address their situation, it must be taken into account the effect of technological discoveries on their subsistence. The larger part of the work conducted by both sections of domestic workers has a feeble requirement of skill and involves monotonous work, like cleaning ceramics or threads, sweeping, and dusting, ironing so on and so forth.<sup>18</sup> With the extension of the middle class, which is the prime origin of contracting for indigenous workers, there is an amplified possibility of replacement of domestic workers by electrical instruments.<sup>19</sup> To some extent, the influence of technological progress so far has been neutralized by the expanding size of the Indian middle class.<sup>20</sup> However, the accelerating modernization of India's middle class<sup>21</sup> is only likely to exasperate the intricacy in the coming tomorrow. Additionally, the increasing imbalance,<sup>22</sup> which is often a pointer of lessened flux along with class divisions, forecasts a rather subdued call in the market for un-skilled domestic workers.

Thirdly, indigenous workers in India frequently face degradation in the workplace. In India, people of the lower tiers of the nation, ordinarily, have succinct consciousness about the rights and solutions available to them.<sup>23</sup> Additionally, given their dependency on wages for basic maintenance,<sup>24</sup> there is scarce or no alternative but to bear exploitative working positions for financial security. Even in those confined cases, where they strive to reinforce their rights, they face institutional indifference and prejudice. Due to the lack of any governing regime in households, they are left at the benevolence of employers, often suffering sexual or bodily injury without any legal or any other form of assistance.<sup>25</sup>

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<sup>17</sup> Task Force, *supra* note 15, at 12, 14: One of the recommendations of the task force recommended skill training programme

<sup>18</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>19</sup> Nona Walia, Robot maids to battle Shantabai, *THE TIMES OF INDIA* (June 22, 2011)

<sup>20</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>21</sup> Ismat Tasleen, How Dependent Are We on Technology?, *THE TIMES OF INDIA* (Oct. 9, 2013)

<sup>22</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-growinginequality-in-India-and-China.html>.

<sup>23</sup> See generally Martin Ravallion et al., *Testing Information Constraints on India's Largest AntiPoverty Program 2-3* (The World Bank, Working Paper No. 6598, 2013).

<sup>24</sup> National commission for Enterprise in the Unorganised Sector, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector* (2007) 86.

<sup>25</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>.

Fourthly, domestic workers in India are normally subjected to prejudice. In India, the notion of domestic workers, especially live-in indigenous workers, indicates the traces of caste and status discriminations Contracting servants bolsters prejudicial behavior.

Live-in household workers are inevitably expelled to a lower status in the household.<sup>26</sup> The reality that specific domestic workers mostly come from marginalized regions of the community,<sup>27</sup> rules them to further socio-economic bigotry. The power disproportion between the master and the domestic worker, with the employer exerting authority over the domestic worker, copulated with a perception of cattiest or classist supremacy over the domestic worker heads to exploitative and unsympathetic treatment being dispensed out to the domestic worker.<sup>28</sup> The domestic workers typically internalize the prejudice, heading towards far-reaching mental consequences, including the dissolution of individuality.

Fifthly, indigenous workers lack any form of social security. Like most workers in the open sectors, part-time and live-in domestic workers have scarce or no passage to basic security, such as basic healthcare, lay-off protection or maternity privileges.<sup>29</sup> With wages for domestic workers usually already subsequently lower than minimum wage,<sup>30</sup> the lack of social security has an impact on their livelihood in incidents of wellness issues, which is very common, courtesy of the systemic nutritional paucity. Further, a notable portion of indigenous workers happens to be women,<sup>31</sup> who suffer physical exploitation in their individual lives by their partners and hold small or no say in pregnancy.<sup>32</sup>, in lack of maternity benefits most of them end up succumbing their vocation, the assurance of a slender income. They are seldom given identification as “workers”, according to them a more substandard status in the community and, consequently, in the economy, when contrasted to other workers in the unofficial sector.<sup>33</sup> Some measure of financial freedom is essential to adequately compete in a free market economy and to apprehend one’s capacities.<sup>34</sup>

Adequate civil security would assure they are in a space to act in their most beneficial interests

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<sup>26</sup> Second national Labour Commission, Report of the Second National Commission on Labour (2002) 611.

<sup>27</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>28</sup> Craig Haney et al., *Interpersonal Dynamics in A Simulated Prison*, Office of Naval Research (1972).

<sup>29</sup> The Social Protection Department (SOCPRO) Geneva, key policy trends and statistics 10(2016)

<sup>30</sup> Rajni Palriwala, *supra* note 16, at 111

<sup>31</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>32</sup> *Id*

<sup>33</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>34</sup> See AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 38 (1999): Economic facilities is seen as one of the five main distinct freedoms.

without being controlled by their critical financial necessities. It would act as a buffer to alleviate uncertainties concerning economic returns and would support them to cope with the result of any collapses.

The problems faced by domestic workers essentially fall under one or more aforementioned sections. In a notable number of cases, certain obstacles are further exacerbated by the role represented by mediators such as Placement Agencies and Resident Welfare Associations. Placement agencies frequently lead to bigger financial exploitation of workers by rewarding workers a trifling amount from the sum they truly accumulate from employers. They are often implicated in serious crimes such as human trafficking and degradation of such workers.

#### **IV. JUDICIAL EXAMINATION OF SUBSISTING INDIAN LAWS**

The lament of the informal sector has been majorly ostracized by the Indian legislature. There is a need for fair enactments to monitor the service conditions of indigenous workers. This part tries to give a general study of bills and legislations that have strived to contribute some security to domestic workers.

##### **A. Early Attempts**

The short-stemmed effort to have a national law organizing the services of domestic workers records back to the Domestic Worker (Conditions of Service) Bill, 1959 and the House Workers (Conditions of Service) Bill, 1989.<sup>35</sup> Nonetheless, these bills never sparked any meaningful dialogue and were never enacted.

The first-ever meaningful attempt was made, when Housemaids and Domestic Workers (Conditions of Service and Welfare) Bill 2004<sup>36</sup> was introduced. It was a bill that only required the State and Central Government to mandatorily register domestic workers in their respective jurisdiction in addition to framing rules to ensure employment opportunities, healthy working conditions, medical assistance, and various other benefits.<sup>37</sup>

Heavy punishments, including fines, and easy imprisonment, were to be inflicted on employers employing unregistered domestic workers or employers acting in violation of the rules.<sup>38</sup> Past attempting obligatory registration, the Bill did not recommend any guidelines either concerning the substantive prerequisites or any implementation mechanism,<sup>39</sup> but chiefly devised it to the

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<sup>35</sup> Rajni Palriwala, *supra* note 16, at 112.

<sup>36</sup> Housemaids and Domestic Workers (Conditions of Service and Welfare Bill), 2004: This Bill was never enacted

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

State and Central Governments, already known for their incompetence and impassivity.<sup>40</sup>

## **B. EXISTING LEGISLATIONS**

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

Numerous provisions of the pre-existing laws have been elongated to accommodate domestic workers to address specific interests such as the Minimum Wages Act, 1948 for the administration of wages.<sup>41</sup> By the end of 2013, only eleven states had supplemented domestic work in the Schedule to the Minimum Wages Act, 1948.<sup>42</sup>

In addition to the obstacles of implementation, there are numerous substantive difficulties with such notifications. It has been heeded by the ILO on Minimum Wages that there is little association between minimum wage and market wage.<sup>43</sup> For example, some indigenous workers are paid considerably less than the minimum wages,<sup>44</sup> while, in other cases, market wages are above the minimum wages.<sup>45</sup> No contract is built between country minimum wage and urban minimum wage,<sup>46</sup> depending on the costs of the domestic workers. In most states, there is no stipulation restricting functioning hours, which is immensely questionable for live-in domestic workers,<sup>47</sup> except a necessity to pay overtime pays.

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

To tackle sexual harassment in domestic households, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“Act of 2013”) has attempted to defend domestic workers through the establishment of a district-level grievance redressal device: Local Complaints Committee, which has the jurisdiction to bestow monetary damages.<sup>48</sup> This Act was not intended to deal with violations of a more pressing nature, as is

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<sup>40</sup> See generally JEAN DRÈZE & AMARTYA SEN, AN UNCERTAIN GLORY: INDIA AND ITS CONTRADICTIONS 81 (2013)

<sup>41</sup> Rajni Palriwala, *supra* note 16, at 115.

<sup>42</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://labour.bureau.nic.in/MW\\_2013\\_final\\_revised\\_web.pdf](http://labour.bureau.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>43</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.

<sup>44</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>45</sup> Neetha N., *supra* note 17, at 50.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Section 13(3)(ii).

required in incidents of domestic workers.<sup>49</sup> Not only is the Act of 2013 disturbed with numerous deceptions and incompetent provisions but even the present provisions have largely prevailed strange and unimplemented.<sup>50</sup> The Act of 2013 has slipped to make any influence on the lives of domestic workers.

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

The ministry of labor prolonged the utilization of ESI to domestic workers in the states like Delhi and Hyderabad.<sup>51</sup> Only medicinal interests, maternity advantages and other need-based benefits outside their reach. Moreover, indigenous workers have been held to be following the classification of self-employed workers,<sup>52</sup> whereby failing to acknowledge the domestic space as a workspace where virtues like minimum wages, operating conditions and so on need to be monitored.<sup>53</sup> The enrollment of domestic workers is voluntary.<sup>54</sup> While the scheme may grant restrained relief to some workers, it emerges to be another rambling struggle to protect domestic workers where statutes suggested are for the prescribed workforce are arbitrarily revised for the informal sector.

## **C. Special Statutes**

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

Significant legislation, thus targeting the whole disorganized sector, is the Unorganized Workers' Social Security Act, 2008. While the Act of 2008 has incorporated indigenous workers within the disorganized sector, it has not established domestic workers, implementing acts is very challenging. This Act sets up a **National Social Security Board** and the State Social Security Board in every state.<sup>55</sup> The committee has a tripartite description of the haphazard workers, employers, and the government, and it values social security projects for unorganized workers.<sup>56</sup> The Act of 2008 also requires enrollment with the community organization to avail of the civil assurances and advantages of the scheme and requires supplement from the workers. While establishing up the Boards for the disorganized sector

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<sup>49</sup> Government Order No.12, Labour and Employment Department, Government of Tamil Nadu (January 22, 2007).

<sup>50</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>51</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>52</sup> *Id.*

<sup>53</sup> Neetha N., Employees' State Insurance Scheme for Domestic Workers: Yet Another Mockery, 52(11) *ECON. & POL. WKLY.*, 16, 17 (Mar. 18, 2017).

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

<sup>55</sup> Unorganised Workers' Social Security Act, 2008, Chapter III

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

workers is an appreciated step in line with international practices. The Act prescribes registrations, the complete process is assigned to the district administration. These boards do not seem to control any substantive authority to cause about a resolute change.<sup>57</sup>

### **(b) Judicial Attempts**

The bar has taken awareness of the impasse of indigenous workers in the vacancy of solid labor laws to guard their rights. The Delhi High Court has endeavored to fill this emptiness by advising guidelines for the child welfare Committee<sup>58</sup> and the Delhi Commission for Women that,<sup>59</sup> *inter alia*, grant some social surety to domestic workers. The two bodies have continued to confer the power to instruct the employer or the employment agency to award restitution to the domestic worker in instances of hard damages created during employment and render medicinal assistance to domestic workers, based on grievances made by a domestic worker, his custodian or employer.<sup>60</sup> However, these guidelines, which have been utilized by governing orders,<sup>61</sup> are under legislations concentrating on women (in Delhi) and children,<sup>62</sup> containing the figure of domestic workers that they could implement to. Moreover, the restrained social security is accessible only after recording objections with the designated executives and no spontaneous right of social confidence is bequeathed upon the worker. Consequently, this is another gradual effort in guarding domestic workers.

## **V. BEST INTERNATIONAL PRACTICES**

An ILO study, covering one hundred and sixty-three nations, distinguished that 43% of the nations as of now accommodate some type of standardized legislation for domestic workers.<sup>63</sup> Despite this, 90% of local laborers all-inclusive keep on being outside of the domain of genuine protection.<sup>64</sup> Even organized and high-salary nations have not had the option to detail an effective structure that covers most, if not all, local workers.<sup>65</sup> Two significant ends might be drawn from this information; first, only having some enactment set up isn't adequate to guarantee security for household laborers; and, also, no nation has had the option to define and

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<sup>57</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).

<sup>58</sup> Constituted under section 29 of Juvenile Justice Act 2000.

<sup>59</sup> Constituted under section 3 of the Delhi Commission for Women Act, 1994.

<sup>60</sup> *Bachpan Bachao v. Union of India*, 2010 SCC OnLine Del 4613 : (2011) 177 DLT 198

<sup>61</sup> Government of National Territory of Delhi, Labour Department, Order No. Addl. LC/Misc(2)/12/ Lab/Part File/1438, September 25, 2014.

<sup>62</sup> *Id.*

<sup>63</sup> ILO Report, *supra* note 37, at ix.

<sup>64</sup> *Id.*

<sup>65</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.

actualize all-encompassing enactment, which bears total inclusion to local specialists. Without any model enactment, it is valuable to dissect the various procedures utilized by countries over the world to distinguish perspectives that make government disability increasingly practical, just as feature those angles which might be going about as hindrances.

### **A. Types of social security**

An initial question to be reflected while prolonging social assurance is to decide who would carry the cost of social security for domestic workers. This would depend on the nature of social protection: social support, social coverage, or employer's mandate.<sup>66</sup> In social support, the undivided cost is sustained by the State. Social coverage is defined by the pooling of resources and the cost is carried by all those who engage in the scheme. Generally, both the organization and the help provide to the scheme. Employer's mandate moves the entire cost against the employer.

#### **(a) Social Assistance**

Hong Kong and Indonesian laws have accommodated all-inclusive social help plans for those, whose pay is inadequate to require fundamental needs.<sup>67</sup> India itself has some social help plans, similar to the Agricultural Labor Pension plan of the Kerala Government, under which a total of Rs.1000 is given as a month to month annuity to farmworkers.<sup>68</sup> Based on the inclusion of the scheme, 115<sup>69</sup> the achievement of the plan can't be questioned. Be that as it may, considering the sheer number of residential specialists in India,<sup>70</sup> the plan loses its plausibility regarding local laborers because of the budgetary weight it would force upon the State. The involvement with Hong Kong and Indonesia give testimony regarding this as the disappointment of the social help conspire is obvious in those countries.<sup>71</sup> These plans have fizzled for two wide

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<sup>66</sup> Kwong-leung Tang & James Midgley, *The Origins and Features of Social Security*, in *SOCIAL SECURITY, THE ECONOMY AND DEVELOPMENT* 23, 24, 27, 34 (Kwong-leung Tang and James Midgley eds., 2008).

<sup>67</sup> Social Security Administration, US, Hong Kong, *Social Security Programs ThroughOut the World: Asia and the Pacific*, 2010, <https://www.ssa.gov/policy/docs/progdesc/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 1891242012 : All the domestic laws of Indonesia concerning domestic workers and the efficacy thereof have been discussed

<sup>68</sup> 14 Government of Kerala, *Social Welfare Pensions*, <https://welfarepension.Isgkerala.gov.in/SchemesEng.aspx>

<sup>69</sup> Govt. of Kerala, *State wise details of Social welfare pensioners*, <https://welfarepension.IsgGovernmentkerala.gov.in/Reportseng.aspx>: 4,97,667 pensioners are covered under the scheme as of 21/09/2016.

<sup>70</sup> 52.6 m domestic workers worldwide, 2013), available at <http://www.thehindubusinessline.com/economy/526-m-domestic-workers-world-wide-highest-in-asia-ilo/article4294195.ece>: ILO estimated that there were 4.2 million domestic workers in India in 2004-05.

<sup>71</sup> International Comparison, *supra* note 113: *Coming Clean*, Justice Centre (2016). <http://www.workersinhongjusticecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-among-migrant-domestic-workers-in-Hong-Kong.pdf> Discusses the forced labour like working conditions of domestic 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\\_](https://web.swk.cuhk.edu.hk/~hwong/pubfile/journal/2000_Failure_of_Social_Security_in_)

reasons; first, the measure of advantage is lacking to raise the poor out of destitution and rather drives them into a neediness trap; and, besides, the people secured by the plan don't have simple access to them.<sup>72</sup>

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

It forces a very substantial weight on every employer, in this manner hugely expanding the expense of utilizing local representatives. Further, the adequacy of this model is dependent upon the worker asserting his privilege under the steady gaze of a court or a council. The lawful familiarity with the household workers<sup>73</sup> and the legal framework is as of now is not prepared to tolerate this burden. This downside isn't just constrained to Hong Kong where the enactment has wretchedly bombed as local specialists keep on working under states of constrained labor.<sup>74</sup> Even if stringent techniques for usage are utilized, almost certainly, the expanded expense would just bring about a sharp drop in work in the division. Further, the business' command is commonly used to cover just business-related injuries<sup>75</sup> and the weight of different advantages, for example, maternity, disorder, wards benefits, annuity, and so forth can't be forced on the employers.

### **(c) Social Insurance**

The most well-known kind of government disability embraced by various nations is that of social protection. To guarantee consistency under such a plan, the State requires records of all business relations, including records of residential laborers with different managers, the individual commitments which the business is at risk to make, any adjustments in work relations, etc. This makes enrollment of every single household laborer mandatory.<sup>76</sup> Countries

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Alleviating\_Poverty\_in\_HK\_NONFINAL\_APJSW.p

<sup>72</sup> Id. Creating a poverty trap.

<sup>73</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>74</sup> Forced Labour, supra note 117

<sup>75</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-ofrights.pdf>: Employers' mandate is used only for work related injuries. There is a social insurance scheme for other benefits

<sup>76</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 employee (2012),[http://www.ilo.org/wcmsp5/groups/public/@ed\\_protect/@protravl@travail/documents/publication/wcms\\_173686.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protravl@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 terminate employment during the trial period of one month.

like France,<sup>77</sup> and Spain,<sup>78</sup> which have a generally high inclusion of residential specialists under a government managed savings, have picked inclusion under a system of social protection.

### **B. Mandatory coverage**

In India, when the well-to-do were spontaneously prompted to give up LPG subsidies, fewer than 4% of the people opted for the scheme.<sup>79</sup> A willful scheme for indigenous workers in India would be correspondingly useless as employers in most circumstances aim to extract the highest labor from domestic workers at merest cost. Intentional schemes, like the Public Provident Fund Scheme<sup>80</sup> can stretch to supply, but not be a proxy for, mandatory schemes.

### **C. Inspection of Household Premises**

In the case of labor laws, the most ordinarily applied approach for guaranteeing implementation is to give Labour Inspectorates the authority to examine the premises. Nevertheless, in case of domestic employment, letting Labour Inspectorates such authority would amount to an intervention into the individual space of the family.<sup>81</sup> Notwithstanding such privacy interests, ILO Convention commands that Labour Inspectors ought to be granted access to residential premises, albeit with suitable limitations that give due reverence to the privacy of the family.<sup>82</sup> France has undertaken these privacy interests by permitting the proprietor the preference to let the Labour Inspector infiltrate his home. Spain, on the other hand, takes apart the discretion from the householder and arranges the same into the controls of the judiciary, provided the Labour Inspector is capable to execute the burden that such examination is designated to enable monitoring related to latent proceedings ere social courts. In the event of an accusation or erudition regarding non-compliance, the Ministry of Labour gathers the employer and the domestic worker to resolve the conflict amicably. Examination of household premises is

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<sup>77</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>78</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>79</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-subsidisedlpg-for-those-with-annual-income-over-rs-10-lakh/>.

<sup>80</sup><https://indianexpress.com/article/india/india-news-india/no-subsidised-lpg-for-those-with-annual-income-over-rs-10-lakh/>

<sup>81</sup> Labour inspection and other compliance mechanisms in the domestic work sector: Introductory guide, International Labor Office, Geneva, 20 (2015)

<sup>82</sup> Art. 17, ILO Convention No. 189

mandated only in instances where an examination of working conditions is required.<sup>83</sup>

#### **D. Dispute Resolution**

ILO Convention has perceived question goals as a significant piece of ensuring local workers.<sup>84</sup> Much like Jordan, there is an expanding pattern towards presenting mollifying debate goals forms as opposed to turning to authorization components. In South Africa, the Commission for Conciliation, where the chief attempts to determine the contest through placation, bombing which the gatherings may decide to parley the matter.<sup>85</sup> Hong Kong offers free appeasement administrations for settling debates identifying with business laws.<sup>86</sup> In India, considering the previously existing weight on the work courts<sup>87</sup> would be unmistakably increasingly appropriate to set up a different body for question goals obliging residential laborers. Further, the procedure could be made liberated from cost, in any event for the household specialist.

#### **E. Unionization**

The unionization's role is undisputed in the protection of the interests of the laborer's<sup>88</sup>. It allows workers to demand their rights which is imperative for the live-in domestic workers, who are isolated due to their work, and as they do not have the facility of a vehicle that allows them to work on their interests and gain a voice in policymaking. To regulate the employer-employee relationship, Collective Bargaining as a means was implemented by most of the European countries and has proven to be successful, whereas from the Asian countries, which are still struggling to extend such rights to the workers effectively.<sup>89</sup>

However, recognition of the rights of domestic workers isn't merely enough<sup>90</sup>, as there is a threat of losing their jobs due to the large availability of workers, and also there is that, that the works develop a personal relationship with their employers which makes it more difficult for

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<sup>83</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.

<sup>84</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>85</sup> Sjöberg, E., Enforcement of laws regulating domestic work: A case study of South Africa. Master thesis, Faculty of Law Lund University, 37 (2011)

<sup>86</sup> Government Of Hong Kong, How to Seek Voluntary Conciliation Service for Free, <http://www.gov.hk/en/residents/employment/employee/conciliation.htm>

<sup>87</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>88</sup> See WEIGO, Domestic Workers Around the World: Organising for Empowerment Christine Bonner Women in Informal Employment: Globalizing and Organizing (April 30, 2010).

<sup>89</sup> KRISTIN CARLS, DECENT WORK FOR DOMESTIC WORKERS, THE STATE OF LABOUR RIGHTS, SOCIAL PROTECTION AND TRADE UNION INITIATIVES IN EUROPE, (2012)

<sup>90</sup> See Claire Hobden, Domestic workers organize – but can they bargain? (2015), (APWLD)

them to engage in collective bargaining actions against their employers.

### **F. Legal Awareness**

One of the most important pre-requisites to ensure efficiency is for the workers to know their rights and for the employers to be aware of their duties.<sup>91</sup> This can be achieved by spreading legal awareness about it, which the same was practiced in Paraguay which saw some success in the form of increased registration of domestic workers.<sup>92</sup> A massive campaign was started by the domestic workers' unions, along with the help of the ILO and the State as well, which was targeted upon the employers and the employees in the rural and the urban areas by adapting messages which targeted a specific set of people by tailoring the words and placing them in the languages accordingly. Many countries organize Information days to reach out to people<sup>93</sup>. The major reason for imparting legal awareness between the workers in the first few years of introducing the social security scheme, cannot be over-emphasized.

### **G. Fiscal Incentives**

One of the most effective ways of ensuring compliance is financial incentives. In France, the employer is exempted from his tax liability, subject to a ceiling as he is allowed to deduct 50% of the total cost of wages and social security contributions.<sup>94</sup> In Ecuador, if the employer makes a timely contribution to the social security schemes, then he is exempted from paying certain administrative costs for the next 3 months.<sup>95</sup> In Costa Rica, the State pays a part of the social security contributions for the domestic employees which act as financial incentives existing the form of government subsidies.

### **H. Imposition of Penalties**

Introducing Penal Provisions on non-compliant employers is another method that can be adopted to ensure compliance, the same as which was adopted in the countries of Argentina and the Philippines where they charge interest on the overdue amount of contributions.<sup>96</sup> In Ecuador, apart from financial penalties, the administration prescribes imprisonment of three to

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<sup>91</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>92</sup> International Labor Office, Geneva, *rights to social protection: Domestic workers are no exceptions* International Labor Organization, Geneva (May 06, 2014)

<sup>93</sup> International Labor Office, Geneva, *Labor Inspection and other compliance mechanism in 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.

<sup>94</sup> ILO Report, *supra* note 37, at 36

<sup>95</sup> *Id.*

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

seven years of the overdue payment even after receiving notice of overdue contributions.<sup>97</sup> While monetary penalties may be introduced to encourage employers to make contributions in time, they should not be too hefty. Penalties, such as imprisonment, would be too harsh for overdue contributions and should not be ideally be imposed on household employers, lest it reduces demand for domestic workers and becomes counter-productive.

## **I. Other Innovative Strategies:**

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

To make an informal economy to a formal one, service vouchers are used as it makes the process of payment of contributions easy<sup>98</sup>. For Eg, France had introduced the 'Cheque Employ Service Universal' (CESU),<sup>99</sup> which intends to reduce the employer's transaction cost by calculating and disbursing contributions to social security schemes on behalf of the employer.

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

Argentina had adopted a unique system that ensured compliance<sup>100</sup>. The responsible authority makes a presumption of a household being an employer of a domestic worker by calculating whose income exceeds a certain amount and whose assets exceed a certain amount and notifies such household of such presumption and charges the respective social security contribution<sup>101</sup>. It is for the household to then rebut such presumption. Instead of imposing penalties such as imprisonment for non-compliance, this appears like a far more feasible option, but its functioning would be affected by the number of people who evade taxes in the country.<sup>102</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>103</sup>. The primary purpose of the Boards is to disburse the benefits to the construction workers<sup>104</sup>. The main

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<sup>97</sup> Id.

<sup>98</sup> International Labor Office Geneva, Decent Work for domestic workers Conference, 99th Session 42 (2010).

<sup>99</sup> ILO Report, supra note 37, at 36: Also discusses a similar system in Belgium where employment must be through accredited companies

<sup>100</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>101</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>102</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>103</sup> The Kerala Construction Workers Welfare Fund Act 1989 Section 16

<sup>104</sup> Benefits include: pension, death benefit, 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.

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>105</sup>. The major drawbacks of the scheme are that the burden of the collection of cess is upon the Labor department, which is already over-burdened with the implementation of existing labor legislation<sup>106</sup> which reduces the potential income of the Fund, which in turn reduces the benefits that may be given to the construction workers. Welfare Boards, which are specific to a class of workers, allow for better maintenance of records, which provides a point of contact for both employers and employees and ensures targeted utilization of funds for the benefit of the workers.

### **J. Cheap Credit**

There are different combinations of nine main branches of social security which are proposed by different countries which are identified by the ILO<sup>107</sup>. Apart from these, the other circumstantial difficulties that worker's face in obtaining credit from the market, especially when the social security schemes in the countries like the Philippines and Costa Rica provide access to loans to registered workers only<sup>108</sup>. But when the schemes fail to anticipate all the concerns of the domestic workers, such loans can help tide the workers through difficult times.

The benefits that are offered under the social security scheme, the more the benefits, the better it would be able to offer protection to the domestic workers. However, this has to be balanced concerning the financial capacity of the State and that of the employer as well. In India, for such a scheme to be effectively implemented without the imposition of harsh conditions on the employer, it would require to have the best strategies of different nations and would be required to be tailored to suit the Indian conditions and requirements.

## **VI. THE PROPOSED SOLUTION**

Domestic workers face a lot of difficulties, the major being economic, physical and sexual harassment, having little or no recourse due to the lack of specialized legislation, lack of awareness of applicable legislation and inefficient implementation of existing legislation. After comprehensively analyzing the major problems faced by domestic workers<sup>109</sup> and the

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<sup>105</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>106</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.

<sup>107</sup> Social Security (Minimum Standards) Convention, 1952 (No. 102), International Labor Org. Lays down minimum standards for the level of social security benefits and 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, See ILO Report, supra note 37.

<sup>108</sup> See ILO Report, supra note 37, at 33

<sup>109</sup> Infra Part III.

international standard practice<sup>110</sup>, it is evident that we need separate legislation and regulatory mechanism addressing the problems of domestic workers.

It is mandatory to ensure social security to reduce economic and social vulnerabilities of a worker and to also ensure the domestic workers access to social security, for which additional measures need to be placed to reduce the barriers which help for the implementation of social security, like over-supply of workers, lack of dispute resolution mechanisms and so on. Similarly, other measures for improving a lot of domestic workers must be tackled consequently.

## **A. Substantive Law Provisions**

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

The initiatives that have been taken by the Tamil Nadu<sup>111</sup>, Maharashtra<sup>112</sup>, and Kerala Governments<sup>113</sup>, it is a necessity that the establishment of Welfare Boards for domestic workers in every district is very much required, as to the given number of domestic workers employed in the country, particularly in urban areas and also it would be suitable to have an independent Board, which specifically caters to the domestic workers. The Board should serve as the first point of contact for the domestic workers. Registration of the domestic workers should be made mandatory and they should impose fines on households employing unregistered domestic workers because almost all urban homes have domestic workers. The initial stages to be taken up the Board would be to reach out to individual homes and encourage them to comply with the mandatory registration requirement.

The board must provide Social security benefits<sup>114</sup> to domestic workers along with the benefits of applicable social security schemes, such as the RSBY scheme<sup>115</sup>, must be consolidated and brought under the purview of the Board to be provided to the workers. The Board should fix the hourly minimum wages<sup>116</sup>, and also provide limited emergency finance at low-interest rates while also providing basic legal assistance to the workers. In addition to these, to tackle the increasing group of unskilled and low-skilled workers, the Board should provide additional skill training to domestic workers and should also focus on training them as cooks, gardeners,

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<sup>110</sup> Infra Part V

<sup>111</sup> Infra Part IV

<sup>112</sup> Infra Part IV

<sup>113</sup> Infra Part V, Establishment of welfare fund boards

<sup>114</sup> The specific benefits conferred expenses 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>115</sup> Infra Part IV

<sup>116</sup> Devolving the role of fixing minimum wages to a district level body would better account for differences in cost of living.

while simultaneously providing basic literacy and IT courses for empowering them. Additional functions of the Board would also include providing cheap credit to the workers (as done in the Philippines and Costa Rica)<sup>117</sup> which will also help reduce the need for social security benefits by increasing the economic capabilities of domestic workers through alternative means.

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

Funding needed for social security should come from contributions made by the domestic workers themselves and from the imposition of an additional property tax as such which is collected in Argentina<sup>118</sup>. A uniform tax for this purpose would serve two purposes: first, the collection of considerations from employers is tackled by strengthening the revenue collection system and without there being a need to create a special mechanism for collection of contributions from specific employers; and, secondly, such tax will not disincentivize or segregate the employment of domestic workers.

The Department of Economic Affairs had noted in the Economic Survey 2016-17 that the rates of property tax in India were quite low comparatively<sup>119</sup> and to increase such property taxes would constitute to an immediate scope for locally raising revenue<sup>120</sup> and therefore, any additional burden will not be unreasonable.

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

Dispute resolution is a necessary topic in cases of domestic workers. Stringent or arduous dispute resolution procedures would discourage and demotivate domestic households from engaging workers. On the global level, the countries have admitted that the need for a quick and simple dispute resolution procedure, predominantly based upon conciliation as the ideal approach<sup>121</sup>. Therefore, we propose giving the Boards such powers to resolve disputes between domestic workers and their employers by the way of conciliation. These powers may be expanded in future if necessary, to include binding arbitration based on the success of the Boards implementation of such power to resolve the issues.

In cases of major incidents like abuse, where conciliation fails or is not an adequate means of dispute resolution, then the Board must also fulfil their duty of assisting domestic workers in approaching the courts and by getting them in touch with the State Legal Services Authority or

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<sup>117</sup> *Infra* Part V, Cheap Credit

<sup>118</sup> *Infra* Part V, Presumption of employment: property tax flows from a presumption of employment of domestic worker in every premise's household and commercial.

<sup>119</sup> Department of Economic Affairs, Ministry of Finance, Economic Survey 2016-17, Chapter 14 ¶305.

<sup>120</sup> *Id.*, at ¶325.

<sup>121</sup> Dispute Resolution, *infra* Part V

the appropriate authority concerned to the issue.

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

The workers in a domestic level have to face a lot of difficulties, especially live-in domestic workers as they are in a precarious situation with characteristically limited social interaction except with the people they live with. This renders them especially vulnerable to a major case of abuse by their employers<sup>122</sup> and this practice of live-in workers is inevitably going to involve abusive behaviour and propagate discrimination shortly<sup>123</sup>. Therefore, it is prudent to deter the use of live-in workers through special provisions and policies, which may be done through drastic measures like notifying of higher minimum wages and fixing working hours, monthly counselling sessions of live-in domestic workers with a social worker at the cost of their employer, creation of a provident fund account for the worker with contribution from their household employer, and other such provisions which may be necessary. Therefore, not only 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 which would, in turn, reduce the abuse of such workers.

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

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

The problems that are posed by the RWAs, can be successfully dealt with by encouraging unionization of such domestic workers<sup>124</sup>. When the domestic workers are in a position to take collective action against the RWAs without any fear of economic insecurity, then collective bargaining will be a useful tool to check arbitrary acts of the RWAs.<sup>125</sup>

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<sup>122</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>123</sup> Id.

<sup>124</sup> Infra Part VI, Improving Regulatory Compliance

<sup>125</sup> See Sohil Seheran, 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-fallson-deaf-ears/story-R1TCHmaCAOWNMlnKHhaGkJ.html>: The call for boycott by the workers' union failed owing to fear of losing income among the workers.

**(f) Long-term measures**

In light of increasing numbers, automation and the discrimination against domestic workers, the Government must institute a nationwide skill-training and developing program that would provide as an alternative to the domestic workers, in the long term. Ensuring alternative employment to the workers would reduce the oversupply of such workers, which would, in turn, swing the market forces in favor of domestic workers, especially in the economic welfare part, dramatically improving the status quo.

**B. Improving Regulatory Compliance****(a) Awareness**

Widespread public awareness of any law related to domestic workers is a recognized standard requirement which has often been neglected while extending current legal provisions on domestic workers<sup>126</sup>. While creating legislation or drafting of policies concerning domestic workers, the State should necessarily include proper and compulsory campaigns to spread public awareness of the same beyond mere gazette publication. While these campaigns are not alternatives to actual implementation, increased awareness among the people may improve compliance of such rules as evidenced by the experience in Paraguay<sup>127</sup>. The State can seek the assistance of NGOs, labor unions and welfare organizations for conducting large-scale public awareness campaigns to target different groups of workers (such as live-in) and employers.

**(b) Unionization**

Unionization is a recognized global practice which improves the bargaining power of domestic workers. Such practices increase the minimum wages ceiling and improve other economic benefits that the worker can get through the market mechanism<sup>128</sup>. The role of such unions in improving the social security and economic needs of the domestic workers has been adequately recognized. In India, especially the group of domestic workers, have been isolated due to various discriminating factors including caste, religion, ethnicity, and so on<sup>129</sup>, and have not been able to organize themselves into unions. Therefore, the Legislation has to play a proactive

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<sup>126</sup> Infra Part IV: Most regulations regarding minimum wages and working conditions suffer from lack of awareness.

<sup>127</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>128</sup> Infra Part IV

<sup>129</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.

role in organizing domestic workers into unions. The Welfare Boards and the authorities may be tasked with the responsibility of promoting and organizing unions of domestic workers. Not only will the formation of such unions improve the market condition of minimum wages of the workers but also make various benefits available to them, all of these, will, in turn, apply pressure on the State machinery to function properly and effectively, and in some cases, even act as a substitute or as an alternative to the state machinery.<sup>130</sup>

## VII. CONCLUSION

In the long run, the making of substantial changes in the policies of the Government vis-a-vis domestic workers is required. The intense competition which takes place among the domestic workers<sup>131</sup> ought to be tempered and regulated, otherwise, any such regulation to formalize the sector would be rendered moot. For instance after the changes in minimum wages are notified and are made publicly aware, then the demand for the same by a domestic worker to their employer would most probably lead to her being replaced by someone who would be willing to work for lesser wages who would, to preserve her new employment, would be wary of the authorities seeking to impose minimum wages, thus, pushing the entire sector towards a more uninformative group and creating distrust for the authorities. There is also a great chance, that the threat of heavy penalties by the authorities upon the employers for the non-compliance with the regulation of minimum wages or working hours could also be counter-productive as it could disincentivize the employers from hiring domestic workers or replacing them with technolog<sup>132</sup> or any formal or professional service providers, for instance, the replacement of cooks with tiffin or meals service.

While addressing concerns of domestic workers, those who are employed in rural/ semi-urban households should be considered in the same group<sup>133</sup>. The proper implementation of such initiatives focusing on the development of rural/semi-urban areas, like Pradhan Mantri Gram Sadak Yojana, is very much necessary to reduce migration of workers to urban zones, consequently reducing the intense competition amongst domestic workers. The implementation of universal social security schemes such as food security, free healthcare, free education is a must as it would be immensely beneficial for domestic workers, both in urban, semi-urban and

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<sup>130</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>131</sup> See Rajni Palriwala, *supra* note 16, at 105

<sup>132</sup> *Id.*

<sup>133</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.

rural areas.

The various problems that the domestic workers have to face cannot be tackled alone in isolation as they are a part of a larger issue that must be addressed at a larger point. The specific legal provisions that are discussed in this paper for all sorts/group of domestic workers must go hand in hand with other socio-economic welfare measures to improve the economic status and welfare of all.

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