

Protection of Migrant Domestic Workers: How far Ensured

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Abstract: From primitive society workers had no dignity. Among them domestic workers were in a crucial position. Even in this 21st century of science & technology, their position became worse, let alone to improve their position. Domestic workers have varied dimensions. This paper is concerned with the migrant domestic workers. This paper opens with the normative and economic case for promoting and protecting migrant domestic workers, highlighting emerging trends in migrant domestic work that further reinforce the need for protection. It tries to find out the reason of abuses of migrant domestic workers. This paper proceeds to foreground the ILO Convention No. 189, and discusses strategies and practices aligned with international human rights standards. This paper also speaks about the present scenario of implementation of ILO Convention No. 189. Finally some recommendations have been provided on what government can do further in partnership with civil society and international organizations to implement legal and social protections for migrant domestic workers.

Keywords: [Domestic workers worldwide; Contribution of domestic workers in economic and social sector; Sufferings faced by migrant domestic workers; present scenario of implementation of ILO Convention No. 189 Recommendations.]

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I. INTRODUCTION

In the present world the miseries of migrant domestic workers are a great concern of national and international human rights based organizations. The domestic workers were never in good position. Their history is a history of oppression, depression & deprivation. Starting in mid-19th century, the employment of a domestic worker became a status symbol for bourgeois households. The character of this migration changed around the start of the 20th century when maids were recruited to work overseas. The subject matter of this paper is these overseas domestic workers i.e. migrant domestic workers. Extreme poverty, separation and divorce of wife make women helpless. In search of livelihood, they are being compelled to migrate as domestic workers. Because of unemployment problem in national level, they prefer to work abroad. But there they are being oppressed and neglected. As it is an unorganized or informal sector so they are not given recognition that workers of the formal sector are given.

Domestic work & domestic worker

Literally “domestic work” means work performed for a household. Domestic work is one of the oldest occupations in the world. Domestic work- household and personal care work, such as cooking, cleaning, laundering, caring for children, the elderly, the ill and disabled, performed by domestic workers is dominated by women and is an important source of women’s employment. As defined by the ILO Convention No. 189, the term “domestic work” means “work performed in or for a household or households”, while a domestic worker is “any person engaged in domestic work within an employment relationship”(Article 1). The Convention applies to all domestic workers, including migrant domestic workers.

Domestic work itself can cover a wide range of tasks and services that vary from country to country and that can be different depending on the age, gender, ethnic background and migration status of the workers concerned. These particular workers have been identified by some academics as situated within “the rapid growth of paid domestic labor, the feminization of transnational migration, and the development of new public spheres (Moors et al. 2009)”

Domestic workers worldwide

Migrant domestic workers comprise a significant proportion of migrant labour force. The ratio stands at 31.8 per cent for the Middle East and 26.6 per cent for Latin America and the Caribbean (ILO, 2011). Women also constitute a large share of international migrants, comprising about half the total migrant stock worldwide

(UN DESA, 2011). A significant proportion of overseas women migrant workers are domestic workers, with regional and country specific differences in migration trends. More than 18% of employed female third-country nationals in the 27 EU Member States are engaged by private households, compared to one per cent among nationals (EUROSTAT, 2011).

Historically, they have not been regarded as the same form of labor as manufacturers or doctors. From the end of the Second World War until the mid-1980s, for instance, “most ILO Conventions explicitly excluded domestic workers from the protections afforded by most employment Conventions (Rosewarne 2013)”.

The lack of knowledge concerning the composition of this workforce has been attributed to this historical lack of attention and advocacy. According to a report by ILO, globally, “83% of domestic workers are women,” and migrants compose a majority of these.

While global and regional data on patterns of international migration for domestic work is not readily available in countries of origin, domestic workers in the Middle East are largely migrants, a majority of them women, from Asia and Africa. Households in the EU tend to mostly rely on domestic workers from the Eastern Europe, Africa and Latin America. Intra-regional and south-south migration for domestic work is also a growing phenomenon. In Latin America important migration corridors are the Nicaragua and San Salvador to Costa Rica, Paraguay and Bolivia to Argentina, Peru to Chile and Colombia to Venezuela. In Asia, such movement occurs from less developed countries in the region to growing economies such as Malaysia, Singapore, Hong Kong and Thailand.

Contribution of Domestic Workers in Economic and Social sector

In today’s world domestic work is a growing economic sector. Domestic workers’ remittances tend to be invested in family well being - nutrition, health care, education, skills development of children or other family members, thus building human and social capital - as well as in small businesses. This contributes to economic growth and development.

According to 2011 ILO estimates based on official statistics from 117 countries, there some 53 million domestic workers worldwide, 83% of them being women. It plays an important role for the functioning of families, households and labor markets. It sustains and renews human life and households, including that of its working members. It frees up household members to join labor markets, and in doing so, domestic workers contribute to productivity, economic growth and human development in countries of employment and origin-considering their economic and social remittances to families and communities back home.

Domestic workers economic participation enhances the wellbeing of the women and children with long term economic impacts and can increase women’s agency and overall empowerment. In *China*, increasing adult female incomes by 10% of the average household income increased the fraction of surviving girls by a percentage point and increased the years of schooling for both boys and girls (Qian 2008). In *Brazil* and *Mexico*, cash transfers directed at women have resulted in higher nutrition and educational levels for children, especially girls, decreases in child labour and better employment for young women. A 2006 Asian Development Bank study in East and Southeast Asia found that nearly 2 million migrants, mostly women, remitted over *US\$3* billion from *Hong Kong, China, Japan, Malaysia and Singapore* averaging from *US\$300 to US\$ 500* per month (Asian Development Bank 2006).

Sufferings faced by migrant domestic workers

Domestic workers are subject to socio-economic discrimination based on economic status, gender, ethnicity among others. They are disproportionately affected by low wages, exclusion from minimum wage coverage, excessively long hours of work, insufficient rest periods and leave, lack of social security, and in the worst cases of psychological, or physical abuse, including sexual harassment and violence. In addition, occupational health hazards (i.e. being exposed to cleaning related chemicals), lack of access to health services and isolation are not a rare occurrence in the lives of migrant domestic workers.

Many domestic workers face verbal abuse such as insults and threats, alongside physical and even sexual abuse. Some domestic workers experience a lack of food and poor living conditions such as having to sleep on the floor in a utility room.

Migrant domestic workers often fall victim to deceptive job offers while in their home country and are coerced to work in conditions upon arrival to which they did not agree. Some fall into bonded labour as a result of the transportation and recruitment costs incurred in taking up a job abroad.

In many countries their right to work is tied to a specific employer, meaning that they are less likely to leave a slavery-like situation since they could be deported and lose their livelihood if they leave that employer. Language barriers and their isolation in the community also make it much more difficult for them to seek help in cases of abuse.

II. CAUSES TO ABUSE

Underestimation of migrant domestic workers

In many countries, migrant domestic workers have a reputation for being “unskilled, low-end and expendable (Gallotti et al. 2013)” which contributes to their vulnerability to abuse and exploitation. Gender stereotypes and bias also add to their negative perception, particularly in the case of female domestic migrant workers who experience “disadvantages arising from their gender and the low social status assigned to domestic work (Gallotti et al. 2013).”

Irregularities during recruitment process

Advertising non-existent domestic jobs and forcing migrants to pay high fees are daily risks migrant domestic workers face. In transit to the country of employment, female workers are particularly vulnerable to physical and sexual harassment and abuse.

Informal nature of domestic work :

Since migrant domestic workers’ work primarily takes place in private households, they are invisible from the formal labor structures, hidden from the public. As a result, they cannot defend their rights and unions cannot represent them. The informal nature of domestic work, often results in exploitative and harsh forms of labor, exposing these workers to human rights abuses (Gallotti et al. 2013).

Vague Regulations :

Due to ambiguous and defective regulations, migrant domestic workers face “excessive hours, physical and sexual abuse, forced labor and confinement(Gallotti et al. 2013).” In many countries, this also includes foregoing wages and paying debt bondage(ILO 2013). Bonded labor occurs when the migrant domestic worker is required to pay off transportation and recruitment costs, as well as agent commission fees.

Social isolation

Since they typically leave their families behind, migrant domestic workers are separated physically from their social network, including their children and close relatives, which contributes to their social isolation. The language and cultural barriers further complicate this transition and make it difficult for these workers to connect with the local population (Women’s Aid Organization 2013). Due to the language barrier, migrant domestic workers know little to nothing about the local laws to protect themselves from abuse in the work place (ILO 2013).

Dependency of employer

In many cases, employers withhold their immigration papers and confiscate their passports, which adds to their dependency and helplessness. This makes it difficult for migrant domestic workers to contact law enforcement officials in order to report abusive working conditions. Additionally, “the absence of work contracts and the fact that in many countries domestic employment is not recognized in labor legislation allows employers to impose working conditions unilaterally.”

Steps taken by civil society

In course of time, a number of strategies have been used by international and civil society organizations in the hopes of improving the conditions surrounding migrant domestic work. These have included conventional means of mobilizing, such as rallies, protests and public campaigns to raise awareness or improve migrant domestic workers’ conditions. Lobbying, at both the national and supranational levels to modify laws (Schwenken 2003) or by trade unions attempting to change the irregular status of migrant domestic workers (Piper 2009) has been used as a tactic. Educational efforts have also been used to inform women of their rights in countries where laws outlining employers’ obligations do exist (Piper 2009). Due to the difficulties in mobilizing domestic workers, initiatives to raise awareness and inform migrant workers of their rights has not always been undertaken in institutionalized manners.

Initiatives taken by international organizations

The International Labour Organization (ILO) has stressed the importance of legal standards for workers and migrants (Piper 2009). It has more specifically addressed states’ lack of protection for migrant domestic workers during its June 2004 Congress (Piper 2009) and during a High-Level Panel Discussion in 2013. The ILO has also launched the Global Action Programme on Migrant Domestic Workers and their Families, undertaken studies in and guidelines for foreign domestic workers in specific countries (Piper 2009) and published a report making note that female migrant workers constituted the main demographics in the sector of domestic work (Piper 2009).

Other United Nations agencies have addressed migrant domestic work, with the United Nations Development Fund for Women attempting to facilitate dialogue between countries to establish agreements that

recognize migrant workers' rights of protection (Piper 2009) and the United Nations Population Fund releasing a report highlighting the gendered aspects of migration (UNFPA 2005).

Collaborative works have been published, including a manual by the International Domestic Workers Network and the ILO, geared to both national and migration domestic workers in Asia and the Pacific (Ramos-Carbone 2012) .

Finally, the historic ILO Convention No.189 and Recommendation No.201 concerning Decent Work for Domestic Workers, 2011, together with the CEDAW General Recommendation No 26. on Women Migrant Workers, (including domestic workers), 2008 and the General Comment on Migrant Domestic Workers by the Committee on Migrants, 2010, provide a framework to promote and protect the rights of domestic workers. Domestic workers' organizations and trade unions have been at the heart of this standard setting and advocacy, leading to the adoption of the fore-mentioned ILO Convention and other instruments.

ILO Convention no. 189

Increasing advocacy, coupled with the increasingly transnational element of domestic work prompted the drafting of Convention No.189, "Domestic Workers Convention, 2011," which mandated rest hours, a minimum wage, some freedom of movement, a clearly worded working contract before migrating, and a right to live outside of their workplace. Under the Convention, domestic workers that take up a position abroad should receive a written contract or job offer containing the specific terms and conditions of employment before they travel to the country of employment - a key principle to combat forced labour and human trafficking. The Convention provides that ratifying member states shall determine the conditions for private employment agencies' operations and other measures of protection.

The Convention consequently requires measures to be taken to determine the conditions for agencies' operations and other measures of protection for migrant domestic workers, including complaints mechanisms and investigations into alleged abuses and fraudulent practices and imposition of penalties where this occurs. The convention further states that domestic workers should be free to reach an agreement with their employer or potential employer on whether to reside in the household.

The Convention further provides that migrant domestic workers are entitled to keep their travel and identity documents in their possession and that domestic workers who reside in the household are not obliged to remain in the household or with members of the household during periods of rest or leave.

Finally, measures are to be taken, under the Convention to ensure the occupational safety and health of domestic workers and that they should enjoy conditions not less favourable than applicable to other workers in respect to social security including in respect to maternity. Progress in extending social security to domestic workers goes hand in hand with strengthening social security protection for migrant domestic workers, including through bi-lateral, regional or multilateral agreements providing for equality of treatment with respect to social security, as well as access to and preservation of portability of social security entitlements, as mentioned in Recommendation No. 201.

Present scenario of the implementation of ILO Convention no. 189

Spain became the first country to introduce new regulations regarding domestic work following the adoption of Convention No. 189. Royal Decree 1620/2011 of 14 November 2011 improves regulations of 1985 governing domestic work. New measures include- better protection from discrimination ; a right to a written contract and the provision of a model contract by the authorities; a right to the national minimum wage, while payments in kind cannot represent more than 30 per cent of the remuneration ; improved rules for on-call periods; and improved support and information for employers to facilitate compliance. Spain has also recently adopted new legislation in 2011 extending the general social security system to domestic workers.

The government of *Jordan* revised its Labour Code and issued Regulation No.90 of 1st October 2009, to include domestic workers, cooks, gardeners and similar workers, becoming the first Arab country to provide labour protections to domestic workers.

The New York State Domestic Workers Bill of Rights passed in 2010 is the first of its kind in the US. It provides for an 8 hour work day, over-time pay, a weekly rest day, protection from discrimination and sexual harassment, workers compensation insurance protection benefiting over 200,000 domestic workers, most of whom are working as nannies, housekeepers and companions for the elderly in New York State. Further, the Department of Labor per requirement of this law is assessing the feasibility of domestic worker organizing and collective bargaining.

In South Africa, labor authorities publish user-friendly information on labor standards for domestic workers and the labor inspectorate has developed innovative means for approaching individual households, including household visits and verifying compliance.

Uruguay- combines legislative protection and collective bargaining for domestic workers. For instance, all employers including those of domestic workers were legally required to be registered employees with the Banco de Prevision Social (BPS, Social Welfare Bank) under which employers and employees make monthly payments to the employees' pension and health fund.

"Several governments have made concrete improvements for migrant domestic workers in the past five years, but in general, reforms have been slow, incremental, and hard-fought," said *Nisha Varia*, women's rights researcher at Human Rights Watch.

The government of **Lebanon, the United Arab Emirates, Kuwait, Bahrain, Saudi Arabia, and Malaysia** have adopted such reforms, Saudi Arabia's Shura Council approved an annex on domestic work to the labour law, but the cabinet has not yet approved it, **Singapore's** Ministry of manpower has repeatedly rejected calls to extend labour law protections to domestic workers. Immigration reforms have proceeded even more slowly than labour reforms.

III. RECOMMENDATIONS

- Consider ratifying ILO Convention No.189 concerning Decent Work for Domestic Workers and ensuring its application and that of the CEDAW Convention and General Recommendation No.26 on Women Migrant Workers in national laws and practice.
- Provide legal channels of migration for domestic work based on objective labour market assessments taking into account the care crisis and related demand for domestic work.
- Promote public awareness programs and targeted awareness raising for employers emphasizing that domestic work is work, highlighting the contributions of domestic workers.
- Extend equal labour protection in national law to domestic worker, and address unique circumstances relating to their intermittent working hours, lodging, and board;
- Improve regulation and oversight of employment agencies and fees charged to these workers by private recruitment agencies .
- Reform immigration policies so that workers' visas are not tied to individual sponsors, and so that they can change employers without the first employer's consent.
- Improve workers' access to the criminal justice system, including through confidential complaint mechanisms, prosecutions, and expansion of victim services.
- Cooperate with labour-sending countries to monitor transnational recruitment, respond to complaints of abuse, and facilitate repatriation.

IV. CONCLUSION

At the end this can easily be stated that even in this 21st century in many countries domestic workers are not treated 'workers' and are excluded from national labour legislation which makes their miseries boundless. Despite their protection needs, policies promoting and ensuring decent work for domestic workers are not up to the mark. Laws may be in need of reform or better compliance and enforcement where they exist. To get rid of untold sufferings of migrant domestic workers it is much more essential to enhance awareness and promote ratification & implementation of ILO ConventionNo. 189, and to share information on related developments and experiences.

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