



Laws to Protect Women Migrant Domestic Workers: Challenges and Solutions

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Abstract

The Women we applaud are at risk of numerous abuses on a global scale. Although women are free to work in the modern period, there are some circumstances in which they are forced to select a career in order to survive, and domestic workers are one such occupation. Domestic workers are exclusively covered by their employers in many economies, but social security regulations provide protection in many others. Domestic employment typically takes place in the home, an unusual workplace. When it comes to domestic workers, it is still difficult to enforce labor laws that include regularized working hours, minimum salaries, and other important components of any type of job. Over 4 million domestic workers in India are thought to be employed in the unregulated and informal sectors. In India, domestic workers relocate within the nation in order to make a living. They are susceptible to issues like as sexual assault, inadequate income, and the absence of social security. They fall under the category of the unorganized sector and are not covered by domestic labor laws. These migrant laborers are members of India's underprivileged and socially oppressed group. Social security has been recognized by the International Labor Organization as a fundamental human right, and it is included into numerous labor-protective domestic laws in India. This paper explores the laws relating to the protection women migrant domestic workers.

Keywords: Women migrant workers, Laws, ILO

Introduction:

Migrant domestic workers, particularly women, make up a significant portion of the global labor force, often working in private households in foreign countries. These workers play an indispensable role in supporting families, caregiving for children and the elderly, and maintaining the well-being of households across the world. However, despite their critical contribution to the economy and society, women migrant domestic workers frequently face a myriad of challenges, including exploitation, abuse, long working hours, and inadequate legal protection. As globalization has expanded, so has the demand for domestic workers. According to the International Labor Organization (ILO), there are over 67 million domestic workers worldwide, with migrant workers accounting for more than half of that number. Generally, domestic work takes place in an unconventional workplace – the household. The implementation of labour legislations with regularized working hours, minimum wages etc which are significant elements for any kind of work, remains a challenge when it comes to domestic workers. Migrant domestic workers, most of whom are women, are often exposed to a unique set of vulnerabilities, including isolation, abusive living conditions, and a lack of access to labor rights and protections. While some countries have made strides to enact laws to protect the rights of domestic workers, many migrant women remain unprotected due to gaps in national legislation and international frameworks. This article explores the condition in India and international conventions that aim to protect women migrant domestic workers, the challenges in their implementation, and potential solutions to improve the legal landscape for this vulnerable group.

1. The Importance of Migrant Domestic Workers

Before delving into the laws that aim to protect women migrant domestic workers, it is important to understand the significance of their labor and the challenges they face in their working conditions.

1.1. The Role of Migrant Domestic Workers

Migrant domestic workers are employed in a variety of roles including housekeeping, child and elderly care, cooking, and cleaning. These workers are predominantly women, with estimates suggesting that women represent between 70% to 90% of the migrant domestic workforce, depending on the region. Many come from economically disadvantaged countries, seeking better opportunities in wealthier nations, often in the Middle East, Southeast Asia, Europe, and the United States. It is assessed that 3.2% of the global population, currently live outside the State of their nationality, while many more migrate within the borders of their own State[1]. The ILO report on Global Estimates on Migrant Workers, 2015 states that women constitute 81 percent of national domestic workers and also 73 percent of the migrant domestic workers[2]. The ILO Domestic Workers Convention No 189 which is vital for promoting the human rights and human dignity of women domestic workers and identify rights of women facing specific forms of discrimination and abuse. women domestic workers are a great help for working women who in various sectors of society perform white collar jobs; these women domestic workers, in their stead perform the traditional roles in such households. Although domestic work is progressively becoming part of the global division of labor, and inextricably integrated with it, it is still seen as an opportunity mostly used by unskilled women from under-developed states. Among these, poverty and the absence of social protection renders such workers

more vulnerable[3]. Women migrate to become a domestic worker when they find a need to meet the expenditures of growing children and family, especially their education; further, the death of their spouse or desertion forces them into domestic work[4]. The surge in middle-class population demands a large domestic workforce to sustain its needs of reproduction of labor, where the rise of a middle class with increased female participation in formal employment creates demand for domestic services, which result in increasing migration. Further lack of opportunities for women in their desired sector in the society drive many of them to seek employment in the domestic sector[5]. Migratory flows in search of domestic work are in part influenced by the lack of decent work for women in their place of origin and the increase in the demand for female domestic workers in destination cities or countries[6]. The UN Special Rapporteur on Contemporary Forms of Slavery has acknowledged a “net of dependency factors” that prevent domestic workers from leaving their situations of exploitation, many of which include constructed vulnerabilities linked to migration status[7].

1.2. Vulnerabilities of Migrant Domestic Workers

It is estimated that there are more than 4 million domestic workers in India who come under the informal and unregulated sectors. The domestic workers in India migrate within the country for their livelihood. They are vulnerable to problems like sexual assault, payment of low wages and lack of social security. They are categorized as unorganized sector and are not protected under domestic labour legislations. These migrant workers are from the marginalized and socially discriminated population in India. The International Labour Organization has

established social security as basic human rights, and it is also implemented in many domestic legislation in India relating to labour protection. India has few laws that protect domestic workers but due to inefficiency and ineffectiveness of these legislations, the workers are not able to raise their voice against these violations and exploitations.

Due to the nature of domestic work, many women are isolated from broader social networks, making them particularly vulnerable to exploitation and abuse. Some of the specific challenges they face include:

- **Long hours** with minimal rest or paid leave.
- **Isolation** from their families, sometimes working in remote or rural areas with limited contact with the outside world.
- **Physical, emotional, and sexual abuse** by employers, including cases of violence, harassment, and mistreatment.
- **Unfair wages** and underpayment for the work they do, sometimes working for years to pay off debts owed to recruitment agencies.
- **Exclusion from national labor protections**, as many countries do not consider domestic work as formal employment.
- Women migrant workers are vulnerable as they are discriminated both as women and as non-nationals of the country in which they work[8]. The UN Special Rapporteur on the Human Rights of Migrants has pointed out that “the lack of watchdog mechanisms and inadequate monitoring by the Government in the country of destination, the recruiting agencies and even consulates, mean that migrant

domestic workers are cut off and abuses remain unseen.”[9] Migrant domestic workers are employed in the isolating and diminished “privatized economy of household labor,” where highly personalized and emotionally exacting work is undertaken in situations that are “heavy with the histories of radicalized subordination.”[10] The Migrant Workers Committee in its General Comment on Migrant Domestic Workers states the explicit role the immigration laws play in the production of vulnerability of the women domestic worker[11]. As immigration laws are restrictive, higher numbers of migrant domestic workers remain undocumented or in an irregular situation and thus are particularly vulnerable to human rights violations[12]. Migrant women domestic worker must continue the sponsorship of a particular employer since the migration law of the State binds a worker’s migration status to the continuous sponsorship of a specific employer; the result being that the domestic worker may risk deportation if they leave any abusive employment. Thus, strict migration laws can “unduly restrict” liberty of movement and increase exploitation and abuse, “including in conditions of forced labour or servitude[13].” Migration status may also limit access to rights such as family reunification[14]. Work permit or visa restrictions of the domestic migrant workers restrict access to public funds; the rights to housing, healthcare, and education are still illusive[15].

2. International Legal Frameworks

Several international legal frameworks have been established to address the plight of migrant domestic workers. These laws aim to provide greater protection and to address the power imbalance between employers and domestic workers. The two most important international conventions are:

2.1. International Labour Organization (ILO) Convention No. 189 – Domestic Workers Convention (2011)

In 2011, the ILO adopted Convention No. 189, also known as the **Domestic Workers Convention (C189)**, to improve the working conditions and protections for domestic workers, including migrant women. This convention was a significant step forward in recognizing domestic workers as part of the formal labor force and in extending labor protections to them. However, only 31 countries have ratified the said convention. This convention imposes more duties to the member states and gives rights to domestic workers like forming of associations, complaint mechanism and protection against all forms of sexual abuse, harassment and violence.[16]

Key Provisions of C189:

- **Equality and non-discrimination:** C189 requires that domestic workers be treated equally with other workers, including protections against discrimination based on gender, ethnicity, or migration status.
- **Minimum wage:** The convention mandates that domestic workers be paid at least the minimum wage in their respective countries or regions.
- **Rest periods:** The convention guarantees that domestic workers have a right to daily and weekly rest periods, which are essential for maintaining health and well-being.

- **Freedom of association:** Domestic workers must be able to form and join trade unions, allowing them to advocate for their rights collectively.
- **Social security:** C189 calls for the inclusion of domestic workers in social security programs, including pensions, unemployment benefits, and healthcare.
- **Contractual agreements:** The convention requires that workers have written contracts that outline their working conditions, including wages, working hours, and the scope of duties.
- **Protection from abuse:** The convention calls for mechanisms to protect domestic workers from violence, harassment, and exploitation.

Challenges with Implementation:

Despite the adoption of C189, many countries have been slow to ratify or fully implement its provisions. As of 2023, fewer than 40 countries have ratified the convention, and in many countries, the legal frameworks for domestic workers remain insufficient. Challenges include:

- **Political resistance** to extending labor rights to domestic workers, especially in countries where domestic work is seen as part of the private sphere.
- **Weak enforcement mechanisms**, where domestic workers lack access to legal recourse if their rights are violated.
- **Cultural attitudes** that devalue domestic work and treat domestic workers as subordinates, reinforcing the barriers to implementing effective protections.

2.2. United Nations (UN) Declaration on the Protection of the Rights of Migrant

Workers and Members of Their Families (1990)

The **UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** provides a broad framework for protecting migrant workers globally. While not specifically focused on domestic workers, it outlines several protections that benefit them.

Key Provisions:

- **Right to equality:** Migrant workers should not be discriminated against based on nationality, race, or migration status.
- **Right to work and fair remuneration:** Migrant workers have the right to fair wages and working conditions, free from exploitation.
- **Right to family reunification:** The convention provides for the right of migrant workers to be reunited with their families, which is often a significant concern for female domestic workers separated from their children.
- **Access to social services:** Migrant workers should have access to social services such as healthcare, housing, and education for their children.

Challenges in Implementation:

- **Lack of enforcement:** The convention lacks binding legal force and depends on individual countries' willingness to implement its provisions.
- **Limited awareness:** Migrant domestic workers, especially in rural or isolated areas, may not be aware of their rights under international law.

- **Hostile political environments:** In many countries, political and public attitudes toward migration are negative, which can undermine efforts to protect migrant workers' rights.

3. National Legal Protections for Domestic Workers

National laws play a crucial role in protecting migrant domestic workers, but the level of protection varies widely from country to country. Some countries have implemented specific labor laws for domestic workers, while others exclude them from basic labor protections.

3.1. Countries with Progressive Legal Frameworks

A few countries have taken positive steps toward protecting migrant domestic workers through national legislation:

- **Philippines:** The Philippines has implemented significant protections for its migrant domestic workers, who make up one of the largest groups of migrant workers in the world. The country's **Overseas Employment Administration** ensures that migrant workers sign contracts that outline their rights and working conditions. The government also provides pre-departure orientation programs to educate workers on their rights and the realities of working abroad.
- **Ecuador:** In 2014, Ecuador passed a law recognizing the rights of domestic workers, ensuring that they receive minimum wage, rest days, and social security benefits. The law also mandates that domestic workers have written contracts and access to grievance mechanisms.

- **Brazil:** Brazil has made significant strides in improving the conditions of domestic workers through the **Domestic Workers' Constitutional Amendment (2013)**, which extended many of the same labor protections enjoyed by other workers to domestic workers, including paid leave, a 44-hour workweek, and social security benefits.

3.2. Countries with Gaps in Legal Protections

In contrast, many countries with significant migrant domestic worker populations have weak or non-existent legal protections for this group:

- **Gulf States (Saudi Arabia, UAE, Qatar, Kuwait, Bahrain):** Many Gulf countries employ large numbers of migrant domestic workers but have not extended labor protections to them. In these countries, domestic workers are often excluded from minimum wage laws, and there are few mechanisms to report abuse or exploitation.
- **Malaysia:** Malaysia has been criticized for its treatment of migrant domestic workers. While the country has implemented some labor reforms in recent years, migrant workers still face abuses such as passport confiscation, excessive working hours, and underpayment. There is a lack of sufficient legal mechanisms for workers to seek justice.

4. The Way Forward: Strengthening Legal Protections

While international conventions like ILO C189 and national laws provide a

framework for protecting migrant domestic workers, much remains to be done to ensure their effective implementation. Several strategies can help strengthen protections for these workers:

4.1. Expanding Ratification and Implementation of International Conventions

Countries should prioritize the ratification of **ILO Convention No. 189** and work toward fully implementing its provisions. This includes ensuring that domestic workers are recognized as formal workers with access to labor rights, including minimum wage laws, social security benefits, and protection from abuse.

4.2. Strengthening National Legal Frameworks

National governments should pass and enforce comprehensive labor laws that cover domestic workers, including provisions for:

- **Written contracts** that clearly outline wages, working hours, and job duties.
- **Monitoring and enforcement** mechanisms to ensure compliance with labor laws.
- **Access to legal recourse** for workers who experience exploitation or abuse.

4.3. Enhancing Awareness and Advocacy

Raising awareness among migrant domestic workers about their legal rights is crucial. Governments, NGOs, and international organizations should collaborate to provide educational programs and outreach services to migrant workers. Additionally, stronger advocacy by civil society organizations can help push for legal reforms and hold

governments accountable for upholding workers' rights.

4.4. Strengthening the Role of Recruitment Agencies

Reforming recruitment agencies is also critical in preventing the exploitation of migrant domestic workers. Governments should regulate recruitment agencies to ensure that they operate transparently and ethically, and that they do not charge excessive fees or engage in fraudulent practices.

Conclusion

Women migrant domestic workers are among the most vulnerable groups in the global labor market. Despite their critical role in the global economy, they often face abuse, exploitation, and legal neglect. International conventions like **ILO Convention No. 189** and national labor laws are vital tools for improving their working conditions and ensuring their protection. However, significant gaps remain in the implementation of these protections, and many workers continue to face exploitation without recourse.

India is yet to pass The Domestic Workers (Regulation of Work and Social Security) Bill, 2017[17]. India has not yet ratified the ILO Convention No.189[18]. The present modern world of human rights needs to focus more on domestic workers and the allied workers; they have to be put within the frame of law. Every human is to possess human rights on her birth, but the voices of the women migrant domestic workers are still unheard and their rights still denied. Governments, international organizations, and civil society must work together to ensure that migrant domestic workers are afforded the same rights and protections as other workers. This includes expanding the ratification and

implementation of international conventions, strengthening national labor laws, enhancing awareness of workers' rights, and holding employers accountable for abuse and exploitation. Only through comprehensive legal reforms and strong international cooperation can we ensure that women migrant domestic workers receive the protection, dignity, and respect they deserve.

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