

Study the Indian Judiciary's part in Ensuring domestic workers human rights

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Abstract - Domestic workers are a vulnerable and underappreciated part of the workforce, and this research looks at how the Indian court has played a key role in protecting their human rights. Due to the informal nature of their employment and the absence of particular regulation, domestic workers often endure exploitation, abuse, and denial of fundamental rights, notwithstanding constitutional guarantees under Articles 14 and 21. Fair salaries, safe working conditions, and placement agency regulation are just a few of the topics that have been addressed in landmark court decisions that this study examines. This article discusses the efforts of the judiciary to provide domestic workers with legal safeguards, focusing on seminal decisions such as *People's Union for Democratic Rights v. Union of India* (1982). Social and cultural considerations, lack of legal education, and institutionalized prejudices are some of the obstacles that domestic workers confront while trying to get justice. It takes a look at judicial initiatives to promote social justice, bonded labour, and situations involving children as domestic workers. Despite the efforts of the court, the study shows that there are still major obstacles. To completely safeguard the human rights of domestic workers in India, it stresses the necessity of thorough legislation, systemic changes, and heightened awareness.

Keywords: Domestic Workers, Human Rights, Indian Judiciary, Labor Rights, Access To Justice, Exploitation.

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INTRODUCTION

Domestic workers in India have a lot of obstacles on the job and often work in the unorganized sector, therefore the role of the court is vital in protecting their human rights. Domestic workers in India are often overlooked and mistreated, while playing a vital role in many houses. They face several challenges, including unsafe working conditions, low income, physical abuse, and no legal protections. Article 14, which guarantees equality before the law, and Article 21, which protects the right to life and personal liberty, provide the groundwork for protecting individual rights under the Indian Constitution. The absence of clear laws controlling domestic workers' employment and the informal character of the job have led to uneven application of these rights¹.

The judiciary's efforts to safeguard the rights of domestic workers have been emphasized by many court rulings. As an example, the seminal decision in *People's Union for Democratic Rights v. Union of India* (1982) acknowledged the importance of equitable

salaries and safe working conditions, emphasizing that the Constitution forbids the use of forced labor in any situation where minimum wage rules are violated. In rare instances of physical abuse or exploitation, the Supreme Court or other High Courts have also stepped in, ordering police to punish abusive bosses². Unfortunately, many incidents go unreported because domestic workers are afraid of reprisal, losing their jobs, or not having anybody to turn to for help in the judicial system.

The importance of placement agencies that hire domestic workers has been brought up by the judges, who have stressed the requirement of openness and responsibility³. Agencies are compelled by certain court orders to keep records of employment contracts in order to combat human trafficking and exploitation. Low knowledge of legal rights, financial limitations, and social stigma continue to be obstacles for domestic workers in obtaining justice, notwithstanding these judicial efforts. While the Indian court has been vocal in its support for domestic workers' rights via its decisions

and interpretations, further structural reforms and legislation are required to provide full protection of their human rights⁴.

METHODOLOGY

The function of the courts in protecting the rights of domestic workers is examined in this article. As mentioned in the previous chapter, domestic workers have several problems in their profession. As a result, cases of abuse are seldom reported, and many workers choose not to take legal action against their employers. Problems including physical abuse, the function of placement agencies, and the fight for decent salaries in the unorganised sector are common themes in the few examples that have been recorded. The study starts by looking at the main causes of women still having a hard time getting justice via the courts. The complexity and hurdles faced by domestic workers while pursuing legal redress are examined in this research via the use of secondary data, which includes pre-existing literature, case studies, and legal assessments.

RESULTS

Barriers To Accessing Justice

There are a lot of barriers that women in India face while trying to get the justice system that they deserve. Lack of access to justice and the rule of law is a result of sociocultural factors, and the majority of Indian women are illiterate. Training for most impoverished and powerless women begins at a young age with an emphasis on the breadth of their responsibilities, rather than raising understanding of their rights. The primary socially enforced duty of women is to care for their families, children, and married lives. Since most human rights violations occur in private households, women are understandably wary of seeking justice in public forums⁵.

In order to bring attention to the efficacy and execution of current laws concerning crimes against women, researchers from Bangalore's National Law School of India University (NLSIU) conducted a study. The cases were chosen based on the relevant sections of the Indian Penal Code: Sections 319–322, which deal with injury and severe injury, Sections 324–326, which deal with the use of dangerous weapons, Section 327, which deals with causing hurt in order to extort property, Sections 339–340, which deal with wrongful confinement and restraint, Section 351, which deals with assault, and Section 498 A, which deals with cruelty in relation to dowry demands. Several problems with the justice delivery system were brought to light by their research.

The National Long-Term Suicide Investigation Unit (NLSIU) brought attention to the fact that the legal system pays little attention to the problem of female victims of violent crimes who have committed suicide. The results clearly showed a direct relationship between domestic violence and case abandonment,

as did giving in to household demands. Extremely long case processing times discourage victims, who may decide to drop out in the middle of the process due to fear, financial hardship, or other factors. Although the trial takes an excessive amount of time, the victims endure an even more excruciating ordeal due to the callous, degrading, and forceful questioning that occurs throughout the trial. Suicide may be a result of this kind of public shame. The psychological toll that the trial process had on the victims may be better understood by delving more into this matter.

A Sathin from the Jaipur district was raped by males of higher caste in her village in the 1992 Bhateri event, which demonstrated prejudice in court rulings. A Session's Court ruling from 1995 claimed that the alleged rape could not have occurred since individuals from higher castes, especially Brahmins, would never rape a lady from a lower caste. On the subject of her "moral character," the judge agreed with the defense's inference. The jury found all five of the rape suspects not guilty. In addition to the many unsavory comments made against Bhanwari Devi's character, the court refused to rely on her testimony. She was accused of deceiving and spreading false information, and there were rumors that she may have had an affair. For victims of assault, this case exemplifies how criminal trial systems are skewed. There has been a long history of sexual assault against women in India, and the situation is still quite precarious today. The Sathin incident proves that upper-caste males pose no threat to women from lower castes.

There are still significant barriers for women to obtain justice, including legal illiteracy, insensitive enforcement agencies, and a male-dominated court⁶. Delays in delivering justice to women persist despite the fact that the law guarantees equal justice to all citizens. Because of the widespread belief that law enforcement and the judicial system are extortionate and exploitative, women often avoid interacting with them. The inherent prejudice against women seeking justice is sometimes exacerbated by the complexity of laws and processes. In order to address the socially built disadvantages that women experience, it is necessary to reevaluate the justice delivery system and its disparities⁷. Women need to be literate in all areas of law, not just general knowledge. When it comes to fair access to justice, women often face several obstacles; hence, a system of equitable justice delivery is necessary.

The Supreme Court held in the case of Bhagwan Dass vs. the State of Haryana⁸ that (a) employers cannot discriminate against workers who perform the same or comparable job just because their hiring process was different, and (b) temporary or casual workers should be paid the same as permanent employees if they perform the same or similar work. Everyone, regardless of their gender, has the right to equal remuneration for equal effort, according to the judiciary⁹.

In the case of *M / S. Bhikusa Yamasa Kshatriya vs. Sangamner Akola Taluka Bidi Kamgar Union*¹⁷, the Supreme Court addressed the framework of the Minimum Wage Act and upheld the legislature's discretion to prescribe differential wages, as well as the constitutional validity of certain provisions of the act. A key goal of the legislation is to ensure that employees are not taken advantage of, and the Court made the observation that this goal can only be achieved by setting minimum salaries for businesses. Of course, the law was crafted with a minimum wage in mind, but in certain areas, businesses, or sectors, it just isn't enough to cover basic living expenses (e.g., due to disorganized labor or a lack of pay regulation machinery).

Their company was also impacted by the Court's continuous application of the laws based on the Act, which granted the government unchecked authority and allowed it to discriminate against companies from various areas. The government has the authority to establish minimum pay rates for various locations and planned occupations under Section 3 (3) (a) of the legislation. Additionally, minimum pay rates may be set by the hour, day, or month in accordance with section 3 (3) (b)¹⁰.

In order to put an end to the exploitation of home workers, the court is also in favor of providing minimum salaries to unorganized workers.

The case of *Bachpan Bachao & Ors. v. Union of India*, decided on December 24, 2010, delves into the plight of child domestic workers. Child trafficking was at the heart of this case. Kalpana Pandit supported her family on a shoestring budget as a domestic servant. She was looking for work in Delhi, yet she was originally from West Bengal. For that reason, she makes occasional trips to Delhi. Placement at Sahyog One of Sanstha's primary functions was to connect those in need with domestic help. In 1999, she entrusted Sunita Sen, the Proprietor of this Sanstha, with her daughter Kalpana to labor as she had already joined housekeeping. The reason for it was that Kalpana became ill and was unwell for quite some time at that time. Therefore, the petitioner is forced to assign housekeeping to her daughter, "Jharana," due to the conditions. Her mother thought her daughter was safe and secure with Sunita Sen, so she began working at her home.

When the petitioner felt better in April, she went to see her daughter at the Proprietor of the Sanstha. Later, she learned that her daughter was employed by the Kaul family in Noida, Uttar Pradesh. The petitioner failed to disclose this information as well. Finding her employer's phone number was even more of a challenge for her. But after that, she forbade her daughter from speaking to her. She returned to Sunita Sen's home, where Sunita set up a phone call with her daughter. But she didn't know who the responder was¹¹.

She visited the Noida location and tried searching at the address the responder had given her many times,

but to no avail. As a result, she went back to asking the responder and even went to the Meharauli Police station about it. Unfortunately, nobody came to her aid.

Kalpana didn't find out her daughter was gone for 1.5 years till her workplace filed a missing person's report on September 6, 2000. Her disappearance occurred on August 29, 2000. Upon learning about the missing complaint copy, Kalpana contacted the respondent, who remained uncooperative. She proceeded to the police station. Although she had submitted a First Information Report (FIR) with the Vasant Kunj Police Station in February 2001, in accordance with section 363 of the Indian Penal Code, no further stringent measures were implemented, and no investigations were conducted. She went to the Juvenile Welfare Board with her complaint. Sunita Sen's absence from the board meeting meant that the matter could not forward. Despite the Juvenile Welfare Board's August 2001 letter requesting an investigation into the situation, it went unanswered.

She asked the court to order respondent no. 4 to turn over the petitioner's daughter in a writ of habeas corpus she filed on May 23, 2002. The petition brought charges against the following entities: the state of NCT Delhi (Respondent no. 1), the commissioner of police (Respondent no. 2), SHO Vasant Kunj Police Station (Respondent no. 3), Sahyog Placement Sanstha (Respondent no. 4), and the juvenile welfare board (Respondent no. 5).

On May 30, 2002, notice was sent to all responses. The matter would be sent to the anti-kidnapping unit, Crime Branch, Delhi Police for further investigation when the papers are produced, according to the court's decision. The court also took Jharana's employment into consideration as a Respondent. At this point in the proceedings, it was revealed to the court that placement companies often use youngsters as domestic helpers, but later on, they are coerced into the flesh trade. This is why the matter is categorized as public interest litigation. Respondent No. 8 was the non-governmental organization Butter Flies. Some have argued that these entities are not subject to any kind of legislative oversight. Child domestic worker abuse was a common complaint, according to the Child Welfare Committee's chair¹².

Her mother was granted custody of "Jharana" once she was finally located. The petition then moved on to address the problems of placing agency regulation, particularly as it pertained to the employment of children and women as domestic assistance. The machinery of these placement organizations must be designed so that similar accidents do not recur in the future. full turnThe study concluded that employment agencies should learn from Jharana's situation because of their careless actions. But some institutions and departments are not taking this seriously enough.

At *Amar Dev v. State of H.P.*¹³, the accused were lodged at the Rest House, where an 18-year-old

child laborer was coerced into cooking meals under the fear of having her wages slashed. Under the influence of alcohol, they grabbed the prosecutrix and poured whiskey down her neck without her will. After that, each of the accused sexually assaulted her without her knowledge or permission. The rape victim took legal action by filing a complaint. She had a medical checkup and provided statements. It was enough to establish rape as a crime. However, the Chemical Examiner confirmed it once again. The fact that she was the victim of this savage conduct was later established as well¹⁴. We may see how women are working under unsafe and terrifying conditions as a result of the horrific actions of their bosses. Numerous forms of violence are perpetrated against domestic workers and other forms of labor.

It is a constitutional aim to achieve equal compensation for equal labor via constitutional remedies by enforcing constitutional rights, as the Supreme Court correctly noted in *Randhir Singh v. Union of India*^{15,16}. Under this case law, the concept of equality has been given a broad interpretation, and the relationship between equality and the fundamental values of the Constitution has been examined.

In the case of *Pankaj Sain v. State* (2014, June 28)¹⁷, the written arguments presented by respondent No. 2 state that, according to Section 31 of the Juvenile Justice Act read with Rule 25 of the Juvenile Justice Rules 2009, respondent No. 2 has the authority to order the payment of compensation in situations where domestic workers suffer serious injuries while on the job. This authority stems from a judgment by the Hon'ble High Court of Delhi, which established that the CWC could rule on cases involving the withholding of agreed-upon wages, harassment by employers or placement agents, abusive working conditions, and the withholding of agreed-upon wages. The CWC could also impose fines and order the payment of compensation in specific cases.

In this case, it was noted that the state governments had not established minimum wages for housework. It is worth noting that, as previously noted by the Hon'ble High Court of Delhi in its verdict, India adopted the PALERMO PROTOCOL¹⁸ in June 2001 to refine its definition of child trafficking. This definition states that "House work" can be one of the forms and main objects of child trafficking. Furthermore, the judges of the Delhi High Court noted that child trafficking often begins with a personal arrangement between a trafficker and a family member, motivated by the trafficker's desire for profit and their family's economic background. If you meet some parents and promise to get their kids a decent job, the parents will likely believe you and give them their kids in the hopes that they would have a better future. Someone, however, kidnaps them and uses them as domestic labor; instead of paying them, someone else pockets the cash.

In its decision, the court granted the following rights to the Child Welfare Committee of India, on whose behalf it had relied:

In the event that a female house worker or her guardian files a complaint, the appropriate authorities have the authority to call the placement agency, the girl's employer, or anyone else to hear the complaint and, in extreme cases, to modify the agreed-upon compensation. To provide orders about agreed-upon pay and, if necessary, to levy fines;

The Child Welfare Committee has the authority to: (a) compensate house workers in the event of serious injuries sustained on the job; (b) instruct placement agencies to adhere to agreements reached with both employers and employees; and (c) restore commissions taken from employers in cases of agency breach of contract. They can face sanctions from the Child Welfare Committee if this happens¹⁹. The Child Welfare Committee has never before had authority over the safety of female domestic workers, but that changes today.

The case of *Child Welfare Committee v. Govt. of NCT of Delhi*, which was later reclassified as Public Interest Litigation, began with a letter written on 12th September 2007. The topic of a baby born in August 2007 and adopted illegally is addressed in this letter. The rape of the baby's mother, a domestic servant who was a juvenile, was another problem. Reporters from CNN IBN were the first to bring this up on television. The underage girl claims that the agency sold her baby to another couple.

The knowledgeable Metropolitan M. recorded the domestic worker's statement under section 164 of Cr. P.C. on September 6, 2007. Arrest warrants were issued for Vinod on October 13, 2007. The housekeeper spoke out when questioned, revealing that a man named Manmohan had raped her. They were both employed, but he as a driver and she as a domestic. His arrest was made. The baby's biological parents were determined to be Manmohan and the housekeeper by use of a DNA fingerprinting test.

Vinod, the employer, was also taken into custody because he was engaged in the baby's sale. On September 3, 2008, this matter was determined. Judgment in this case hinged on whether or not placement agencies adequately protect children who serve as domestic servants. Due to financial hardship, many children were either brought to Delhi or sent there by their parents. The central government has already published the notice under the Child Labour (Prohibition and Regulation) Act, which prohibits the use of children in domestic service. However, in reality, many females work as domestic servants, completing tasks around the home such as child care. Because of the long hours they put in, child domestic workers are unable to exercise the freedoms guaranteed to them by the Juvenile Justice Act, the International Convention on

the Rights of Children, and the United Nations Rules of 1990²⁰. So, if we see a rise in crimes committed against young domestic workers, the state has a responsibility to raise awareness and consistently monitor the education and overall development of children.

Gudiya, a minor domestic servant, was employed at the appellant's residence in the 2013 case of *Dr. B. K. Batra V. The State*. The appellant did not pay her the minimal salary. Even after the girl went missing, the appellant did nothing to find out what happened to her. According to the High Court's writ petition, the appellant must pay a minimum salary of Rs. 1, 18,000/-. The appellant contended that her employment as a domestic worker meant that she was not subject to the provisions of this Act's schedule. Additionally, the appellant is not included in the employer's schedule. Therefore, he claims that she is only qualified for the agreed-upon salary. The employer in this case entered into an arrangement with a minor domestic worker, and the High Court rightfully restricted them from using their services. They were also ordered to pay the kid minimum wages and compensate her for the loss of her youth²¹. Many kids are forced to work as domestic help, which means they miss out on childhood and school and can't even legally form contracts. The court correctly ordered the employer to pay minimum wage since he promised her labor and was negligent with her.

No Lawful Defense For Indian Domestic Helpers

Efforts to enact dedicated laws protecting domestic workers from exploitation are also on the decline in modern India. However, there is a fairly high degree of maltreatment with them. Housekeepers in affluent cultures are often the targets of violent crimes. We saw an incident involving the Mahagun Society in Chapter 2, when the employers arrested a housekeeper who was 26 years old. They said she committed stealing in their home, so they took her into custody. The fact that she had gone two months without receiving payment was later became public knowledge. Domestic servants are subjected to such inhumane treatment and abuse. Housekeepers at Mumbai's Posh Housing Society recently went on strike over their bosses' decision to pay them below-average wages. Soon after, the bosses gave in to the workers' demands, but only a few months later, they fired them²². In the final chapter, the researcher covered a few instances of domestic worker abuse. It was noted that these women endure many forms of abuse but are unable to seek justice due to their poverty and lack of education.

The petitioner, National Domestic Workers Welfare Trust, brought forward several problems that house workers already face due to their job in *National Domestic Workers Welfare Trust v. Union of India*. In accordance with the Indian Constitution, the petitioner urged the Supreme Court to ensure domestic workers have a bare minimum of protection. Several requests from housekeepers were brought to the attention of the court by the²³ applicant.

All of these protections and benefits, as well as coverage for domestic workers, would be provided under the Unorganized Sector Bill, 2004, the Central Government responded to the petitioner's requests. Housekeepers had previously not been included in the job schedule. Later on, this Bill included them as well.

An informal domestic worker who had been employed for thirteen years by the school's nuns was once fired. In a ruling, the Delhi High Court rejected the case. The absence of an employment letter and the fact that the institution had not filed any statements prior to her name being recorded with the Directorate of Education were the grounds for her dismissal. That's why the petitioner, who was fired without regular worker benefits, was only a part-time worker who allegedly attempted to take a kind gesture for herself²⁴. Consequently, this decision established that in order to get benefits, one must provide official documentation of employment as a domestic helper. In light of this ruling, official registration, minimum salaries, and social security must be prioritized in India.

Encouraging Fairness In Society

Justice P. N. Bhagwati stressed the responsibility of the courts in *People's Union for Domestic Rights v. Union of India*²⁵ to uphold the fundamental human rights of the poor and other marginalized members of society and to play an active role in achieving and acknowledging the objectives laid forth in the Constitution. The responsibility of the courts to protect the most fundamental human rights of marginalized groups was appropriately highlighted by Justice Bhagwati.

Subsequently, in *Sanjit Roy V. State of Rajasthan*²⁶, the Supreme Court ruled that the state cannot profit from the impoverished circumstances of the afflicted people and that they must be protected under labor laws. The Supreme Court upheld the ability of disadvantaged groups to receive protections under labor rules. In light of this, the court has mandated that the state safeguard this part and include safeguards into all labor legislation.

Given the same constraints and hardships, the Supreme Court ruled in *P. Shivaswamy v. State of Andhra Pradesh*²⁷ that it is not unfair to compare domestic workers to bonded laborers. In a case involving bonded labor, the Supreme Court ruled that "The Society envisaged under the Constitutional set up cannot more take bonded labor as a part of it." The Court cited this ruling in *Bandhua Mukti Morcha v. Union of India*²⁸. In order to experience the social advantages, privileges, and powers granted by the Constitution, every Indian citizen must unite in accepting every other Indian citizen as an equal. Employers shouldn't be able to take advantage of their workers' poverty by making them work for free.

The Court slammed many state governments for failing to fully execute the Bonded Labour System (Abolition) Act, 1976, which mandated that state governments rehabilitate bonded laborers in

accordance with the Act's stated terms. As a result of these rulings, comprehensive laws were required to safeguard the rights of domestic workers in India. To²⁹ better appreciate the working circumstances of domestic servants, the court here has equated their situation with bonded labor.

Although these instances did add to the domestic workers' problems, they did not solve them or enhance their lives in any meaningful way. The researcher wants to make a point that not all Indians have reaped the benefits of India's independence and the consequent guarantee of basic rights outlined in the country's constitution, and that includes domestic workers, who continue to endure excessive hardship despite the country's 74 years of independence. It would seem that the well-to-do in India have an interest in maintaining this history of oppression in order to continue receiving inexpensive labor for their household requirements, and that many individuals in the country have shown little concern for the plight of domestic workers. Most of those involved in this inhumane behavior are members of the administration, and it is well known that they prolong this practice for their personal advantage. It seems that no Indian organization is really committed to improving the lives of domestic women; instead, they all seem to be interested in maintaining the status quo for their own personal gain.

CONCLUSION

Even though the Indian court has been essential in recognizing and attempting to secure the rights of domestic workers, it is necessary to implement a mix of legal, legislative, and social changes in order to ensure that the human rights of domestic workers are adequately safeguarded. Even though domestic workers in India still have a long way to go before they are granted justice, they have reason to be hopeful since there is continuous legal action and wider improvements.

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