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**PROTECTION OF DOMESTIC  
WORKERS: GENDER INEQUALITY**



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**Abbreviation :-**

AIC	Anti India Crew
Art	Article
AIR	All India Reporter
FLR	Factory Law Reporter
ILO	International Labour Organisation
NCW	National commission for women
N.H.R.C	National Human Right Commission
PIL	Public Interest Litigation
S	Section
SC	Supreme Court
UOI	Union of India
WP	Writ Petition



**Case Referred :-**

- ❖ National Domestic Worker Welfare Trust v/s State of Jharkhand &ors, (2014) 1 AIR Jhar R 249 : (2014) 134 AIC 507 : (2014) 140 FLR 950.
- ❖ N.H.R.C V. State of Arunachal Pradesh,AIR 1996 SC 1234.
- ❖ National Domestic Worker Welfare Trust V. UOI,W.P.(PIL) No.2810of 2012.



**Abstract :-**

In India, we usually listen term domestic worker. We always talk about worker who work under factories, industries and company but nobody talk about domestic worker. Domestic worker play an important role in various fields but they have no recognized right, those worker work in factories and industries they fight for their rights under labour law, labour law cover various Acts such as Industrial Disputes Act,1947, Trade unions Act,1926, Workmen's Compensation Act, 1923 etc. Domestic worker condition in India is very degradable they come under unorganized sector, domestic worker have no right. Mainly in this field, we see women are working in house as a washer, to take care of child, cleaning purpose also and men was also indulge in this field as a Driver, Gardener. Domestic worker working hour is so long, no time management, no interval, weekly holidays is not proper, in this people is not organized then it was also create problem in negotiation. In modern times, urban area is developed so much. Women start working the ration of working women is increases day by day then there was a need to hire a domestic worker who take care of her home. Mostly domestic worker are come from illiterate area, poor working condition and main problem is those people is not aware of their right, illiteracy is a biggest problem if people aware of their right then they were fight for it. Domestic worker not only in urban area but the value of domestic worker is increases in rural area also. Domestic worker not only present in house but it cover my other area also. We are new generation of this era. We have provided awareness to domestic worker, in some places domestic worker are sexually harass also. Wages are not definite it was vary from area to area.

**Key Words :** Domestic Worker , Rights, Protection , discrimination , Labour Law.

## **Introduction :-**

Domestic sector is a valuable part of our economy. In domestic works also there were a gender discrimination in various area where limitation are mentioned that this particular work done by women. How we classify the work on the basis of gender. Government makes various policy to different section of society but also mind the real situation of society that was ruining condition of society in that particular section. No economic security is provided in this sector of people. No leaving system is made for this domestic worker. When any person work in any industry, factory and company at least one day holiday was given in a week but on other side no leave is given to domestic worker. Domestic worker not time limit also people work at long hours, this issue was not only with women but men also. Interval period of domestic worker was also depend on their work, How much amount of work is remain sometimes it was also happen that they even don't take a rest of one hour. In some places domestic worker were working in day and night after all that condition we do not provide any right. Many works are in home which was not possible without domestic worker. Domestic worker percentages are increases day by day it was not in decreases nature. Ration of domestic worker is increases according to it exploitation with this worker is also increases. When we do not given right of this sector, then the exploitation of domestic worker is not stop and it was also necessary to aware the people about their rights. Domestic worker was also come under marginalized sector of society and my worker are migrant worker because in one area no amount of work is provided and their wages are also low then they were migrate from one place to another. Many people of rural area migrated from urban from searching of work but they are not properly skilled person. In every person mind that house hold work are easily done by women then this work are given to women other then household work was given to men.

## **Defining Domestic Worker :-**

Definition of domestic workers is not defining clearly anywhere but the scope of domestic worker is limited and narrow. It was also very difficult to define the area of domestic worker. Domestic worker are those who are employed in household work such as cleaning house, washing cloth, iron clothes, cleaning utensils, take care of children, take care of old age person in house and also take care of pet. Generally above mention work are done by women and men doing gardening and driving. Exchange of his work people provides consideration in form of cash and other remuneration also. No fix legislation provides protection of domestic workers and no labour legislation was also provided protection of domestic worker. Domestic worker are not permanent in nature they are hired on temporary basis. How long they work in a house but they are not a permanent member of family. There is no set based income limit, domestic worker income is according to their work and it was decided in which area they are worked. After that condition of domestic worker, percentage of domestic worker is increases day by day. Domestic worker living condition was also not so good. In normally people celebrate festival and take a holiday but when talk about domestic worker, people give no holiday to their domestic worker, it was just an unjust condition with domestic worker. We are fight for equal justice but in reality there are my section in society who has no right and they have no option in reality to fight this unjust condition of his/ her living. We are make the definition of domestic worker in more wider way then it clear the situations of domestic worker.

Domestic worker was classified into various part

- I. **Part time** – Part time work means worker employed in a fix time. They don't do work in full day but they do work in a specified period of time and perform specified task in that particular time.
- II. **Full time**– Full time work means worker do full day work almost and after completing work at night return back their home. They start their work from morning and end at night. We called it full day paid worker.
- III. **Live inworkers**– Live in worker means that worker who worked full day and also live.
- IV. **Migrant workers** – Migrant worker are those worker who are change their place from one place to another because of certain reason. In rural area there was no much amount of development then people change their place and shifted from rural area to urban area. Natural calamity, lack of opportunity and desire to see glamour world bring people from urban area and create situation then they leave their own place. But these migrant workers suffer too much to

survive in new area face various problem like no immediate job is possible, financial crises and food problem also.

**Inter-state domestic workers** are a type of migrant worker which are shifted from one state to another state.

**Overseas domestic workers** are also a type of migrant worker, which not only change their place but also change their country. Generally people change their country to earn more money but it effect sometimes very bad. Domestic worker are illiterate and poor they do not have any understanding of labour market. People misused these workers and exploited also.

### **Different Problem Face By Domestic Worker :-**

- Domestic worker mainly work in people house, people house is a private place. So, it is impossible to apply legal legislation. Domestic worker work is private in nature. It is quiet difficult to apply law in house because we cannot identify what is happen between four walls.
- Domestic worker are illiterate, poor and unskilled person. They do not have any understanding about their rights and they are unable to fight for their right. Their condition is degraded from day to day. No proper food, holiday and living conditions are also not good.
- Domestic worker come from tribal and rural area. It was a very big difficulty face by domestic worker because it was not easy to them to adopt new environment. Their culture, language. They take time to adopt new environment, when they come then they leave behind their home and outcome of it. Leave their own culture and found them self in a isolated form.
- Domestic worker are unorganised sector then they have no power of negotiation and to reveal their grievances.

Approximately 90% worker in India is women and child. The main age group come in this profession of domestic worker between 12 and 75. In shop, hotels and restaurant mainly below 14 year and child work on it. People heirs these type workers because it is easy to manipulate child and when age slowly increase then rationality come.

- When anything lost in house then first instigation was toward domestic worker because they come from poor area and never ever see luxuries life. They face various problem just like blaming without doing anything face 'police investigation.
- Domestic worker face various types of torture and violence. If maid and servant late in one day then they were not given proper food and even not treat them well. It was quiet difficult to follow the instruction of owners, they given money for work but we do not sale them self ,usually feeling like owner control of body.
- In India ratio of working women is high so that value of domestic worker is increases day by day.

In this field there was also discrimination on the basis of caste, sex and gender.

Mainly, caste discrimination is a very big problem faced by domestic worker. Low caste worker are not hired by high class people for cooking food and not allowed people to go on home temple, touched sacred things. When there was a question of appointment of domestic worker then first check of caste of that person after hired that person.

These are the major issues faced by domestic worker.

Shocking news come on 12july,2017, when zohrabibi found on basement in society in unconscious condition and reason behind it that she was beaten by his employer because she has an allegation of stealing money. Sometimes problems not in front of society because poor people do not want to run for cases and fight for. I know our judicial system is very strong but reality are come when these instances happen with people. Poor people also not that much amount of money to fight for their right government provide free legal aid but people do not know about it.

We see above incident happen in Noida but several other incidents also happen in other places. One more case come in front of society this case was happen in Bombay, a boy sonu come from Bhopal a poor family his employer beaten him at that time when blood not come from his body and after that leave sonu. Employer beaten sonu just because he was pick up lipstick of employer. Court case is filled employer shows that sonu was tried to suicide but reality come in front of people after life sentence was given all four family member of employer. This case happened in 2006 and two year later punishment was given.

### **Degraded condition of domestic worker :-**

Value of life is decreases slowly but it was not a good indication toward a society. We know technology is developed very speedly it never replace the place of human being. Now robots are available but people are generally hire servant for work in a home. When you give respect then

you gain respect but it was not applied in certain sector just like domestic workers, we raise expectation that worker give respect but we think that why we don't apply this rule on ourselves. To improve the working condition of worker. ILO passed a convention 189 in which ILO given instruction to nations that to make law which provide protection to domestic worker and those worker also which are in unorganised sector. Art. 3 of ILO convention 189 says that we protect the human rights of all domestic worker, Human rights are very basic right. These basic rights are to avail to all human being, means to live with dignity and equality there is no discrimination. Art. 10 says about working hour of domestic worker, basic or minimum wages are provided to domestic worker. When domestic worker do an extra hour then extra pay must be given to that worker. In 24 consecutive hour provide resting period to domestic worker, if domestic worker is in live-in worker then do not harm the privacy of that worker. Provide separate space to that worker. Art. 13 of ILO convention 189 says that when domestic worker health and safety is very important. We must be take care of his health and safety. If health of domestic worker is not good then provide proper relief. If condition of worker is not well then sufficient amount of leave should be provided. We see in many area that if domestic worker health is not good but after that also he will be compelled by employee to do that worker and if you do not do that type of work then send another person in place of you but leave could not be given. It was not good when any employer not in field of domestic worker take leave easily. Domestic worker wages is also curtailed according to their leave no relief was given already wages of domestic workers are not so high after that employee cut salary of leave no amount leave behind it.

### **Ineffective legislation :-**

There is various legislation in India which protect the right of organised sector but it was ineffective in unorganised sector, generally domestic worker come under unorganised sector because they are work under home it was a private space not a public space. It is quiet difficult to these people to form association and fight for their right or negotiate with employee. Unorganised sector define under s 2(l) "unorganised sector" means a sector in which less than ten worker are working under enterprises, they are own by individual or self employed person mainly engaged in production or sales of goods or providing service to people.<sup>1</sup>

S 2(m) "Unorganised Worker" means a worker which are work under home, these worker are self employed or a wage worker. Government makes laws to protect the various sector of

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<sup>1</sup>The Unorganised Worker's Social Security Act, 2008.

society, these laws are Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, Equal Remuneration Act, 1976, Workman's Compensation Act, 1923, Inter-State Migrant Workers Act, 1979 and Payment of Gratuity Act, 1972. But these scope are limited to organised sector it was not provide any benefit to unorganised. Government has to make changes under it and widen up the scope of these Act, so that these Act was also provide protection to people of unorganised sector.

In 2010, NCW passed a bill to protect the domestic worker main object of this Act was that This Act is "Domestic Workers Welfare and Social Security Act, 2010" but this Act was not actually achieve his object and ineffective to provide justice and protection of domestic worker. ILO passed a convention 189 in ILO work to provide decent working condition of domestic worker but India is fulfil the condition of this condition.

As per laws made by government of India to provide a good environment and better working condition and to protect domestic worker from exploitation and abuses. But in reality government is fail to achieve this objective. Most worst condition of domestic worker because they do not have any Act which protect worker completely.

### **State Make Legislation to Protect Domestic Worker :-**

State government make various laws to protect the right of domestic worker. Andhra Pradesh, Bihar, Chhattisgarh, Rajasthan, Odisha, Jharkhand, Karnataka, Kerala and Tamil Nadu of all these state make effort to given right of domestic worker.

State of Tamil Nadu make various provision to protect the right of domestic worker one of his effort is to include domestic worker into Manual Workers Act and also make a Board for domestic worker. Maharashtra make more efforts to Tamil Nadu. Maharashtra make certain changes in Maharashtra State Public Service Conduct Act, 1997 in this Act Maharashtra government provide instruction to government employees to prohibit the children whose age is below 14 years. This above rule is also found in other state rule book but nobody follow it. When we in government office then we found that a child was come to bring tea it was also a domestic worker why do not prohibit this type of practices also. Karnataka mentioned that in his rule book that minimum wages was also provided to domestic worker then exploitation of domestic worker in name of his salary is decreases.

Various state government Start social security scheme to provide benefit of domestic worker these state are Andhra Pradesh, Bihar, Chhattisgarh, Rajasthan, Odisha, Jharkhand, Karnataka, Kerala and Tamil Nadu.

State government of Karnataka make provision and provide budget to domestic worker Rupees 10 crore to provide smart card of unorganised sector working people in this we include domestic worker also. Almost work is done but no result come in front of government. Main problem is not to complain because they have less resources and poor. When no complain is lodge then no right protect them. There is a suggestion that we make our complaining system is easy then laymen person also understand it.

Government of Rajasthan make provision to domestic worker to provide minimum wages it was 5,642 to domestic worker who was doing work as a cleaning, washing cloth, take care of child etc . This was implemented according to Labour department of state in 12 December 2015 but benefit of this was not provided at that time also.

### **Case- National Domestic Worker Welfare Trust v/s State of Jharkhand &ors<sup>2</sup>**

In this case, government start various scheme to protect the right of domestic worker.

Government also generate fund to this scheme but implementation of this scheme is not so good now a time also people are unaware that government run ten scheme to protect domestic worker these scheme run under unorganised sector of social security Act, 2008. We are live in democratic country our life is ruining of various rules and regulations of law which are helpful to people.

When a child take birth then registration is mandatory after that birth certificate is made and when a human being is died then death certificate is also very necessary. Our whole life is regulated by various laws, these laws make our life simple. Various scheme provide food to people in very cheap level if they are unable to purchase food in high rate so we can't say that government doing nothing but we can say that people are not aware of scheme there was a need to spread legal awareness to the people. Unorganised Act coming in 2008 .Many year is passes to enact this Act but present scenario is no implementation of this Act. This act was enacted to provide protection to poor ,illiterate people, ignorant sector of society, BPL member, Sanitation worker, Auto rickshaws drivers, street vendors, Rickshaw puller, Building and construction worker, Domestic workers, Rag pickers.

### **Case- N.H.R.C V. State of Arunachal Pradesh<sup>3</sup>**

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<sup>2</sup>(2014) 1 AIR Jhar R 249 : (2014) 134 AIC 507 : (2014) 140 FLR 950.

<sup>3</sup>AIR 1996 SC 1234

Supreme Court held that it is the duty of state to protect the life and dignity of every person who in a state. If any group is threaten to another group and bound other group to do this type of work it was against the Constitution of India . State has a right to protect its citizens right if state is fail and not take action against those people then it was going against the constitution of India.

#### **Case – National Domestic Worker Welfare Trust V. UOI<sup>4</sup>**

In this case writ petition is filed that domestic worker is excluded from all the benefit of labour legislation then this writ petition is given protection to domestic worker. Court given order to central government that to form a legislation to protect the right of domestic worker.

#### **Gender inequality in this patriarchal society :-**

When we talk about society then we say that we live in patriarchal society. In patriarchal society, we give all right to men, all decision making power was given in the hand of men but we talk about domestic worker then in work main ratio was denoted to women. Society divided work also into two part why we mention right to equality in our fundamental right because in actual there is no implementation of this fundamental right. Every where there is so much gender inequality in society. In house hold work mainly women is hired for work because women do better household work in comparison to men. Women condition is very burnable, people do not give respect in home and work place also. In work place women bear abusive language of their employer and exploitation. Mainly women suffer harassment in workplace. In earlier times women are not allowed to come out of home but according to the need of society women come out of home. But women do not give that amount of respect which they deserve. Women work in home after that go home and also do her home work. Sometimes women bear domestic violence in their life. Husband comes late night in condition of drunk and beaten to his wife. Women condition is not burnable in domestic worker but in all field of working area in comparison to men. Women and men not do that work as a passion but it was a kind of need. They do not have any kind of skill then they do this type of work. Gender discrimination do not only in domestic worker but also in every field of work.

#### **Conclusion :-**

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<sup>4</sup> W.P.(PIL) No.2810of 2012.

This paper is only to protect the right of domestic workers because we see that those worker work in any industry and factory they have sufficient right to protect them self. Domestic worker have no law to protect themselves. This domestic worker is exploited in every field there is no fixation of wages and working hours. Employer uses their arbitrary power to assign work of long duration and also not provide resting period of worker. Mostly people are illiterate and poor; they are unable to fight for their right.



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