This chapter is an attempt to present the paid domestic work as an occupation set within the legal and institutional framework both nationally and internationally. Paid domestic work has always been a complex area as far as legislation and policy making is concerned because of the specific nature of work relationship, place of work being a private household as well as the societal view of domestic work coloured by varied historical and cultural contexts. Developing labour laws for domestic workers also encompass a distinct dimension of development and human rights concerns. The legislative framework of paid domestic work has been extensively discussed by Ramirez-Machado (2003), and ILO reports on Domestic Workers (2010, 2013). Ramirez-Machado has presented a cross national comparative analysis of labour legislation in more than 60 countries. Out of the 60 countries studied, 19 had enacted specific laws or regulations dealing with domestic work while another 19 had devoted specific chapters or sections to the domestic work meaning that the legislation may not apply to the domestic workers in its entirety. 17 other countries have set no specific regulations on domestic work in their basic labour legislation. Another 9 countries exclude domestic work from the scope of labour legislation. In effect, domestic workers tend to remain legally unprotected or under protected. This is what Ramirez-Machado calls 'legal stigmatization'. As he puts it, "The catch-22 is that, although domestic workers are often considered as a special category, this does not mean that specially tailored standards are enacted to take into account their particular conditions of work and employment relationship."
On the contrary, this normally means that they are afforded a lower protection than other categories of worker. This legal stigmatization occurs in two different ways: passively, when they are explicitly excluded from the scope of basic labour standards applicable to other categories of worker and thus are deprived of the basic protection afforded to those other categories; and actively, when special laws or rules in the basic labour legislation are specifically enacted given that those laws, on the grounds of the particular nature of domestic work, in general terms, grant to domestic workers a lower protection than other categories are offered by general labour laws.¹

The recent initiatives by International Labour Organisation (ILO), like adopting the Convention on Domestic Workers, have significantly speeded up the legislative processes in several nations, resulting in various regulatory and welfare mechanisms being introduced and reinforced. The aim of this chapter is to take stock of these developments.

This chapter is organized as follows.

Section 3.1 presents an overview of coverage of labour law and protection mechanisms with respect to domestic workers.

Section 3.2 contains a discussion of ILO and its approach towards paid domestic work over the past years.

Section 3.3 presents international labour standards i.e. convention 189 and Recommendation 201 as well as the progress on implementation of these standards.

Section 3.4 discusses the Indian scenario on legislation for domestic workers.

3.1: An Overview of legal protection for Domestic Workers -

3.1.1 Coverage under National Legislation

The inadequate coverage of domestic workers under the national legislation and the regional variations in such coverage has been well documented in the ILO (2013) report on “Domestic workers across the world: Global and Regional Statistics and The Extent of Legal Protection.” The report finds that only 10% of the domestic workers worldwide are covered by general labour laws to the same extent as other workers while 29.9% are completely excluded from the scope of national labour laws. 47.8% of the world’s domestic workers are covered partly by the general labour laws and partly by subordinate regulations or specific labour laws or state-level legislation which frequently result in weaker protection.

The ILO (2013) report throws light on the extent of legal protection available to the domestic workers through national legislation covering three major aspect of work conditions viz. working time, wages and maternity protection. These are discussed in the following sections-

3.1.2 Working Time

ILO’s Hours of Work (Industry) Convention, 1919 (No. 1), set 48 hours as the acceptable limit for a normal working week. ILO’s Forty-Hour Convention, 1935 (No.47) and Article 24 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948, also advocate that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Working hours of domestic workers around the world are among the longest and most unpredictable and regulating their working time is a contentious issue as the fixed hours generally contrast
with the expectations of employer households. Working hours of domestic workers are also closely associated with their employment arrangements i.e. full time or part time, live in or live out. Long working hours are especially common among live-in domestic workers, who usually work on a full-time basis and are expected to be available at all times.

3.1.3 Working Hours
ILO Policy Brief 2 (2011a) states that the lowest average weekly hours worked were found in Australia, New Zealand and industrialized countries in Europe, while the highest average weekly work hours, of more than 48 hours, were in Asia for the period 2002-2007.
ILO’s report (2013) also presents the excessive weekly working hours put in by domestic workers in Asian countries like Indonesia (51.6 hours, 2008), Malaysia (65.9 hours, 2008), the Philippines (52.0 hours, 2010) and Thailand (58.3 hours, 2003), crossing the 48-hour limit. As far as legal coverage is concerned, 20.9 million or 39.7 per cent of the total domestic workers are entitled to the same limitation of their normal weekly hours as other workers, and a further 1.9 million or 3.6 per cent have some limitation of normal weekly hours – although on less than other workers. However, despite the near-universal adoption of working time legislation, no upper limit on normal weekly hours exists in national legislation for more than half of the world’s domestic workers. In other words, 29.7 million, or 56.6 per cent of the total domestic workers around the world are not covered by working time protection. Of these, 28.2 million domestic workers are deprived of this protection because of their exclusion from existing national standards on normal hours at work.
3.1.4 Weekly rest periods
Specifying weekly rest periods is also a part of working time regulation. The ILO report (2013) states that 23.6 million or 44.9 per cent of all domestic workers worldwide, are not entitled to any weekly rest under national legislation.

3.1.5 Paid Annual Leave
The third element of working time is the paid annual leave. The Holidays with Pay Convention (Revised), 1970 (No. 132), establishes the right to annual paid leave of a minimum of three weeks per year. For 25.7 million or 48.9% of all domestic workers across the world, entitlements to annual leave are on par with other workers. For another 2.7 million domestic workers, annual leaves are shorter than other workers while 44.4% of the world’s domestic workers remain outside the purview of annual leave provisions.

3.1.6 Remuneration
According to ILO Policy Brief 1 (2011), domestic work is amongst the lowest paid occupations in any labour market. The low levels of remuneration is attributed to low levels of education, undervaluation of domestic work, pay discrimination and low bargaining power of the domestic workers. Low pay in the domestic work sector is also linked to the perception of domestic work as being “unproductive” because it does not directly generate economic gains or profits for the households employing them. Paid household work is thus perceived as devoid of value and exogenous to the labour market.

- **Wages**
ILO (2013) estimates suggest that domestic workers typically earn less than half of average wages – and sometimes no more than about 20 per cent of average wages. In India domestic workers earn about 31.6% of the average wages.
According to ILO report (2013) More than half of all domestic workers enjoy minimum wage coverage. 26.9 million domestic workers or 51.3 per cent of the total are entitled to a minimum wage on par with that applicable to other groups of workers, and another 3.1 million or 5.9 per cent of the total entitled to a minimum wage below the general level.

About 21.5 million domestic workers are not covered in countries despite the minimum wage regulations for other workers being in place, while 0.8 million domestic workers lack coverage because they work in a country without minimum wage setting institutions. In total, some 22.4 million domestic workers or 42.6 per cent of the total are not entitled to any minimum wage, and are therefore left vulnerable to abusive wage practices.

- **In kind payments**

  The minimum wage floors necessarily specify the wages in cash. The calculation of value of food and lodging as a part of wages i.e. counting it as in kind payment amounts to exploitation. However, the 22.4 million domestic workers who are not protected by minimum wage laws, are also unprotected regarding in-kind payment practices.

3.1.7 Maternity Benefits

- **Maternity Leave**

  Globally, Approximately 27.6 million women domestic workers (63.3 per cent of all female domestic workers) are entitled to leave periods of at least the same duration as other workers. A further 0.3 million (0.7 per cent of the total) have some entitlement to maternity leave, but the duration is shorter than for other workers. In contrast, 15.6 million women employed by private households (or 35.9 per cent of the total) have no legal entitlement to maternity leave at all. This lack of coverage is
due to the exclusion of domestic workers from existing provisions that establish the right to maternity leave for other types of workers. In the Middle East, domestic workers are generally excluded from maternity leave. In Asia, three out of four domestic workers lack the right to take maternity leave.

- **Maternity Cash Benefits**
  17.3 million, i.e. 39.6 per cent of all women domestic workers are not entitled to maternity cash benefits.
  As in the case of maternity leave, such entitlements are absent in the Middle East, and more than three-quarters of domestic workers in Asia are excluded from any entitlements.

### 3.1.8 Good Practices

The ILO (2013) report also throws light on good legal practices relating to domestic workers. Some of the national labour provisions are presented below.

- **Weekly Rest Period**
  The labour legislation in Uruguay and South Africa establishes an uninterrupted weekly rest period of 36 hours for domestic workers.
  In Uruguay, the specified weekly rest period includes the whole day on Sunday, while in South Africa it may be converted, by agreement, to a minimum of 60 consecutive hours every second week.

- **Annual Paid Leave**
  In Spain domestic workers have the right to 30 days of annual paid leave, of which at least 15 must be consecutive.
  In Zambia, the labour legislation entitles domestic workers to accrue not less than two days of paid leave per month.
  In Mozambique the entitlement to annual leave for domestic workers is linked to the number of years in the job: a domestic worker has the right to 12 days of paid holidays during the first
year, 24 days during the second, and 30 days per year from the third year onwards.

The legal coverage for domestic workers with respect to annual leave is especially good in Latin America and the Caribbean where 98% of all domestic workers enjoy annual leave which is the same or longer than for other workers.

- **Wage Agreements**

  In France, the employers of domestic workers are organized into a federation since 1949 which regularly concludes collective agreements with four trade unions. These agreements include a detailed schedule of wage rates by different skill levels and seniority.

  In Italy the collective agreements have been signed since 1974.

  In Belgium, wage negotiations take place in a bipartite bargaining committee.

- **Fixing Minimum Wages and Protecting Wages**

  Since 2003, the Brazilian Government has adopted a policy of gradual and predictable increases in the minimum wage. By 2011, the domestic workers had experienced a rise in their real incomes by 47% as against 20% increase in wages of all workers.

  The Government of Namibia has appointed a Wages Commission for Domestic Workers in 2012. Its functioning will be guided by the existing Namibian legislation and the Domestic Workers Convention.

  In countries like Brazil, Canada, France and Bolivia, payments in kind are not permitted at all.

- **Maternity Protection**

  In Bolivia, the Labour Code endows domestic workers with better maternity leave entitlements of 90 days of maternity leave as against 60 days for other workers.
South African domestic workers are entitled to at least four months of maternity leave, paid by the Unemployment Insurance Fund which is a compulsory contributory social security system.

In South Africa, the dismissal of an employee on account of her pregnancy, intended pregnancy or any reason related to her pregnancy is automatically deemed unfair.

In Brazil, the dismissal of a domestic worker without just cause from the time a pregnancy is discovered until five months after the delivery is prohibited.

### 3.2 International Labour Organisation (ILO) and domestic work

#### 3.2.1 ILO’s earlier engagement with Domestic Work

In 1965 the International Labour Conference adopted a resolution on the conditions of employment of domestic workers, which recognized the “urgent need” to establish minimum living standards “compatible with the self-respect and human dignity which are essential to social justice” for domestic workers in both developed and developing countries.

An ILO survey undertaken in 1970 showed that domestic workers were “particularly devoid of legal and social protection” and “singularly subject to exploitation,” and that their legitimate interests and welfare had long been neglected in most countries.

ILO (2010) report on Decent Work for Domestic Workers maintains that domestic workers were covered by international labour standards that relate to fundamental principles and rights at work. The stand taken by the ILO is that domestic workers

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are included in the international instrument’s scope unless excluded expressly. The following discussion highlights such instruments and their applicability to domestic workers:

- The Sickness Insurance (Industry) Convention, 1927 (No. 24), and the Medical Examination of Young Persons Recommendation, 1946 (No. 79), specifically stipulate that they apply to domestic workers.

- In order to ensure that domestic workers are not inadvertently excluded from the scope of the Convention on the Protection of Workers’ Claims (Employer’s Insolvency) Convention, 1992 (No. 173), the proposed definition of insolvency contained in Article 1, paragraph 1, was revised to refer to “employer’s assets” rather than the more restrictive “enterprise’s assets” to ensure that domestic workers would not be indirectly excluded.

- Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applies to all “workers and employers, without distinction whatsoever.”

- The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), seeks to ensure that workers enjoy adequate protection against interference in the establishment, functioning and administration of their representative organizations.

- The Committee of Experts on Application of Conventions and Recommendations (CEACR) has consistently interpreted that ILO Conventions C89 and C97 require extending the legislative provisions concerning freedom of association, including the right to organize, to domestic workers. For example, in 2008 the Committee of Experts published individual observations to this effect on Bangladesh, Canada (Ontario), Haiti, Kuwait and Swaziland. The Committee has
also noted the intention of China, Macau (China), Gambia and Yemen to modify legislation to include the right of domestic workers to organize.

• The CEACR in its observation to the Government of Mexico concerning Convention No. 87, in 2005, noted that, although domestic workers were covered by Mexico’s Federal Labour Act, the Government should ensure that they enjoyed the guarantees of the Convention “in practice”.

• The fundamental principles of non-discrimination and equality of opportunity reflected in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100), also apply to domestic workers. In fact, the CEACR has taken a position that laws or measures designed to promote equality of opportunity and treatment in employment and occupation that exclude domestic workers from their scope are contrary to these Conventions.

• The CEACR has also found that domestic workers are often affected by wage disparities between men and women and has guided the governments to ensure that rates for female-dominated occupations such as domestic work are not set below the level of rates for male-dominated occupations involving work of equal value. In case of Costa where the minimum wage of female domestic workers is equivalent to the minimum wage for unskilled workers, the CEACR questioned the classification of domestic work as “unskilled” work.

### 3.2.2 ILO and Decent Work for Domestic Workers Campaign

The concept of Decent Work relates to “opportunities for women and men to obtain decent and productive work in conditions of
freedom, equity, security and human dignity". Anker et al (2002) have identified six dimensions of decent work as follows:

- Opportunities for work
- Work in conditions of freedom
- Productive work that generates acceptable livelihoods for workers and their families, and contributes to sustainable development and competitiveness of enterprises and countries.
- Equity in work
- Security – health and financial security- at work
- Dignity and respect at work

In its report on Informal Economy and Decent Work (2002) ILO used the term Decent Work in the context of informal employment. For the ILO, informal economy is characterized by unremunerative jobs, no recognition or protection by law, absence of rights at work, inadequate social protection, and the lack of representation and voice representing serious deficits in decent work.

**Domestic Work and deficits in decent work**

ILO report (2007) highlighted decent work deficits in the domestic work sector. The report documented glaring gaps in human rights of domestic workers like physical abuse and exploitation at work, no rights at work, their vulnerabilities and exclusion from legal protection, abusive practices of placement agencies and the plight of migrant and child domestic workers.

While the previous ILO conferences had taken note of the precarious situation of domestic workers; however it was only in 2008 that the Governing Body proposed that the promotion of

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decent work for domestic workers should be placed on the ILC’s agenda in 2010, in order to prepare new ILO instruments.

3.3 International Labour Organization (ILO) and Domestic workers Convention (C 189)

3.3.1 At its 100th Session in June 2011, the International Labour Conference adopted the Convention concerning decent work for domestic workers, and a Recommendation supplementing it. This is the first time that the International Labour Organization (ILO) has formulated international labour standards dedicated to this particular group of workers. The new instruments, referred to as the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011, can be interpreted as a strong and valid recognition of the economic and social value of domestic work and also as a call for action to address the existing exclusions of domestic workers from labour and social protection.

3.3.2 The Convention and Recommendation are founded on the fundamental premise that domestic workers are neither “servants”, nor “members of the family” nor second-class workers.

The Convention and Recommendation are historic because, for the first time, international instruments are applied to an essentially informal segment of the global workforce. As the majority of the domestic workers are women, the new standards are an important step to promote gender equality in the world of work and thereby ensure women’s equal rights and protection under the law.

For the domestic workers across the world, the following words express the significance of these instruments-
"The instruments before us are robust, practical and human and they hold tremendous potential for bringing domestic workers out of the shadows. They give faces to these workers who have been invisible for so long, barely even counted in the statistics until recently and they provide for domestic workers to be streamlined into the Decent Work Agenda."^5

Convention No. 189, which becomes binding under international law for countries that ratify it, lays down basic principles and measures regarding the promotion of decent work for domestic worker. Recommendation No. 201 is a non-binding instrument that offers practical guidance for the strengthening of national law and policies on domestic work.

The Recommendation builds on the provisions of the Convention and needs to be read in conjunction with it. It serves as a source of guidance for Member nations with regard to measures they may take to apply the Convention.

The Recommendation also contains guidance on several matters not addressed by the Convention, e.g. policies and programmes for the professional development of domestic workers, work-life balance, provisions regarding statistical data and international cooperation in a number of areas, including with regard of the protection of the rights of domestic workers employed by diplomatic personnel.

3.3.3 The Convention on Domestic Workers C189 and Recommendations 201 (ILO, 2011b)

A detailed analysis of provisions of the convention and recommendation is as follows:

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^Toni Moore, worker delegate from Barbados, at the 100th Session of the ILC on behalf of the Worker Vice-Chairperson of the Committee on Domestic Workers quoted in ILO (2011c)

"Decent Work for Domestic Workers Convention 189 & Recommendation 201 at a glance" ILO Geneva

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• **Article 1**
The Convention defines “domestic work” as “work performed in or for a household or households” (Art. 1(a)). Domestic work may involve a range of tasks, including cooking, cleaning the house, washing and ironing the laundry, general housework, looking after children, the elderly or persons with disabilities, as well as maintaining the garden, guarding the house premises, and driving the family car.
A “domestic worker” is defined in Convention No. 189 as “any person engaged in domestic work within an employment relationship” (Art. 1(b)).
The Convention specifies that “a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker” (Art. 1(c)).

• **Article 2**
The Convention covers all domestic workers (Art. 2(1)).
Exclusions are permitted where: (1) Domestic workers are otherwise provided with higher or equivalent protection; and (2) domestic workers for whom significant problems may arise with regard to the application of the Convention (Art. 2(2)). Such exclusions can only be made after consultation with the employers’ and workers’ organizations.
Any exclusion and the underpinning reasons must be specified in the government’s first report to the ILO on the Convention’s implementation. Subsequent implementation reports should indicate measures that may have been taken to extend coverage to the workers concerned (Art. 2(3)).

• **Article 3**
The Convention recognizes that the promotion and protection of human rights and ensuring decent working and living conditions for domestic workers are interrelated and mutually reinforcing...
objectives. Therefore, Article 3 requires Members to take measures to ensure the effective promotion and protection of human rights of all domestic workers, as set out in the Convention. Article 3 (1)
Each Member shall, in relation to domestic workers, take the measures to respect, promote and realize the fundamental principles and rights at work, namely:

- freedom of association and the effective recognition of the right to collective bargaining;
- elimination of all forms of forced or compulsory labour;
- effective abolition of child labour; and
- elimination of discrimination in respect of employment and occupation. (Article 3 (2))

Members are required to protect the right of domestic workers and their employers to establish and join organizations, federations and confederations of their own choosing (Art. 3(3)). Recommendation 2 includes elimination of legislative or administrative obstacles, strengthening capacity of workers’ and employers’ organizations.

- **Article 4**

Article 4 states that the Members are required to set a minimum age for domestic workers consistent with other relevant international conventions and not lower than that established for workers generally. Convention 189 and Recommendations 201 draw attention to the need to identify hazardous domestic work and to prohibit such work for children under the age of 18, taking into account Convention No. 182 and Recommendation No. 190 supplementing it. Article 4(1)
The convention requires each Member to take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does
not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training. Article 4(2) Recommendation 5(1) includes identification, prohibition and elimination of hazardous domestic work by children. Recommendation 5(2) suggests limitation of hours of work, prohibition of night work, restrictions on excessively demanding types of work, monitoring living and working conditions.

- **Article 5**
  Article 5 states that the domestic workers, a large majority of whom are women and migrants, are particularly vulnerable to physical, sexual, psychological or other forms of abuse, harassment and violence because their workplace is shielded from the public and they generally lack co-workers. Live-in workers are particularly concerned. The Convention requires Members to take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence. Recommendation 7 suggests setting up complaints mechanisms, investigation and prosecution, relocation from the household, temporary accommodation and health care and rehabilitation.

- **Article 6**
  Article 6 of the Convention requires Members to take measures to ensure that domestic workers, like other workers generally, should enjoy fair terms of employment, decent working and living conditions that respect their privacy. Recommendation 17 provides that, accommodation and food when provided should include, a separate, private, furnished, ventilated room that is equipped with a lock, the key to which should be provided to the domestic worker; access to suitable sanitary facilities, shared or private; adequate lighting and, as
appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements of the domestic worker concerned.

- **Article 7**
  Article 7 of the Convention requires Members to take measures to ensure that domestic workers are informed of their terms and conditions of employment, such as the usual workplace, the remuneration, the normal hours of work, periods of daily and weekly rest, etc. This information must be communicated to the domestic worker in an appropriate, verifiable and easily understandable manner, preferably through written contracts. In the case of migrant domestic workers, additional protection is provided by requiring that workers receive a job offer or written contract before crossing national borders. Recommendation 6 suggests for assistance for understanding the terms and conditions, communication of terms and conditions, model contracts.

- **Article 8**
  Article 8 lays down the provisions that specifically concern migrant domestic workers like receiving a written contract that is enforceable in the country of employment, provision for repatriation at the end of their employment. It also requires the members to cooperate with each other in applying this convention to migrant workers. Recommendation 20(2), 21, 22, 23 and 26 suggest assistance services and facilities, provision of information, access to complaint mechanisms and legal remedies, repatriation and international cooperation with respect to migrant domestic workers.
• **Article 9**

Article 9 of the Convention contains a number of provisions that address the particular risks and issues arising from live-in arrangements like possession of travelling documents, freedom to decide about living in the household of the employer generally as well as during rest periods and entitlement to privacy. Specifically, the convention lays down that -

(a) Domestic workers are free to decide whether to reside in the household (b) Those who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and (c) They are entitled to keep in their possession their travel and identity documents.

Recommendation 3, 17 and 18 emphasize on protecting the privacy of the domestic workers in the context of work-related medical testing, employer-provided accommodation and food, reasonable period of notice and time-off for seeking new accommodation in case of termination.

• **Article 10**

Art [10 (1)] of the Convention No. 189 requires Members to “take measures towards ensuring equal treatment between domestic workers and workers generally” in relation to normal hours of work, overtime compensation, periods of daily and weekly rest, and annual paid leave. while recognizing special characteristics of domestic work.

Article 10 (2) stipulates that the weekly rest period should be at least 24 consecutive hours.

Article 10 (3) of the Convention leaves the issue of on call or stand by periods to national laws, regulations or collective agreements to determine the extent to which these periods would be regarded as hours of work, the modalities and
standards governing stand-by duty, and the type and extent of compensation for on call periods.
Recommendation 8 to 13 include recording of working hours, regulation of stand-by periods, night work, rest during the working day, weekly rest, compensatory rest and annual leave.

- **Article 11**
  Article 11 of the Convention provides for extending minimum wage coverage to domestic workers without gender discrimination and also for the protection of remuneration.

- **Article 12**
  Article 12 (1) of the Convention specifies modalities for the payment of remuneration. It provides that payments shall be made directly to the domestic worker, as opposed to a third party, in cash and at regular intervals but at least once a month. Further, the fees charged by private agencies are not to be deducted from the remuneration of domestic workers.
  Article 12 (2) provides that the cases where national law, regulations, collective agreements or arbitration awards permit the payment of a limited proportion of the remuneration in kind, these cannot be less favourable than those generally applicable to other categories of workers and need to be agreed to by the workers and be for their personal use and benefit. The monetary value attributed to such payments in kind must be fair and reasonable.
  Recommendation 14, 15 and 20(3)) include regulating payments in kind, wages statements, prompt payment upon termination, protection of worker’s claims in case of employers’ death or insolvency.

- **Article 13**
  Article 13(1) of the Convention recognizes that every domestic worker has the right to a safe and healthy working environment
and requires Members to take effective measures to ensure the 
occupational safety and health of domestic workers...... calling 
for measures “in accordance with national laws, regulations and 
practice” and “with due regard to the specific characteristics of 
domestic work”.

Article 13(2) provides that such measures may be applied 
progressively, in consultation with the most representative 
organizations of employers and workers and, where they exist, 
with organizations representative of domestic workers and those 
representative of employers of domestic workers.

Recommendation 4 and 19 include measures to ensure 
occupational safety and health.

- **Article 14**

  Article 14 (1) states that each Member shall take appropriate 
  measures to ensure that domestic workers enjoy conditions that 
  are not less favourable than those applicable to workers 
  generally in respect of social security protection, including 
  maternity benefits.

  Article 14 (2) states that the measures referred to in the 
  preceding paragraph may be applied progressively, in 
  consultation with the most representative organizations of 
  employers and workers and, where they exist, with 
  organizations representative of domestic workers and those 
  representative of employers of domestic workers.

  Recommendation 20 and 26(2) include facilitation of payment of 
  social security contributions, bilateral, regional or multilateral 
  agreements and cooperation, consideration of in-kind payments 
  for social security purposes.

- **Article 15**

  Article 15 (1) of the Convention provides for regulation and 
  control of practices of private agencies. A number of measures
are put forth focusing on the protection of domestic workers from abusive practices.

Article 15 (2) states that while giving effect to the provisions of 15(1), the Members should consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Recommendation 23, 26(2) advocate promoting good practices, international cooperation regarding the monitoring of private employment agencies.

- **Article 16**

Article 16 requires members to ensure that domestic workers have effective access to the court, tribunals or other dispute settlement mechanisms under conditions not less favourable than those available to workers generally.

- **Article 17**

Article 17 guides the members to -

- Establish effective and accessible complaint mechanisms and means of compliance with national laws and regulations for the protection of domestic workers Art. 17(1);  
- Develop and implement measures for labour inspection, enforcement and penalties in accordance with national laws and regulations with due regard for the special characteristics of domestic work Art. 17(2) and with due respect for privacy of the household in which the work takes place. Art. 17(3)

Recommendation 7, 19(b), 21 and 24 suggest raising awareness and providing information on existing legislative, enforcement and complaints mechanisms, investigation and prosecution of complaints, assistance to victims, access of labour inspectors to the workplace.
• **Article 18**
Article 18 stipulates that each Member shall implement the provisions of this Convention, in consultation with the most representative employers’ and workers’ organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice. Wherever appropriate existing measures may be extended or adapted to cover domestic workers or specific measures for them may be developed.

• **Article 19**
Article 19 states that the Convention 189 does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

Articles 20 through 26 contain provisions about administrative aspects of ratification procedure, registration of ratification with ILO, rules about when the convention comes into force, denunciation by a member and revision of the convention.

• **Article 20**
Article 20 directs the Members to communicate the formal ratifications of this Convention to the Director-General of the International Labour Office for registration.

• **Article 21**
Article 21 stipulates that

- This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

- Further, it shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
• Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

• **Article 22**
  Article 22 provides that
  • A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration.
  • Such denunciation shall not take effect until one year after the date on which it is registered.
  • Further, each Member which has ratified this Convention and which does not exercise the right of denunciation provided for in this Article within the year following the expiration of the period of ten years mentioned in the preceding paragraph, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

• **Article 23**
  Article 23 states that the Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization and draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

• **Article 24**
  Article 24 states that the Director-General of the International Labour Office shall communicate to the Secretary-General of the
United Nations, for registration in accordance with Article 102 of the Charter of the United Nations, full particulars of all ratifications and denunciations that have been registered.

- **Article 25**
  Article 25 states that the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention, at such times as it may consider necessary and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

- **Article 26**
  Article 26 describes the procedures to be followed should the Conference adopt a new Convention revising this Convention. In that case, unless the new Convention otherwise provides:
  - The ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22, if and when the new revising Convention shall have come into force;
  - As from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
  - This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

- **Article 27**
  Article 27 declares that the English and French versions of the text of this Convention are equally authoritative.
3.3.4 Ratification of Domestic Workers Convention (C189)

Uruguay became the first country to ratify the Convention (C189) on 14th June 2012 followed by ratification by Philippines on 5th September 2012. According to the rule, the Convention (C189) came into effect a year after two countries had ratified it i.e. on 5th September 2013.

By July 2014, 14 countries had ratified Domestic Workers Convention (C189). The list of 8 countries in which the Convention (C189) is in force is shown in Table 3.1.below:

Table 3.1: List of countries where the Convention (C189) is in force.

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of Ratification of C189</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uruguay</td>
<td>14 June 2012</td>
</tr>
<tr>
<td>Philippines</td>
<td>5 Sept 2012</td>
</tr>
<tr>
<td>Mauritius</td>
<td>13 Sept 2012</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>10 Jan 2013</td>
</tr>
<tr>
<td>Italy</td>
<td>22 Jan 2013</td>
</tr>
<tr>
<td>Plurinational State of Bolivia</td>
<td>15 April 2013</td>
</tr>
<tr>
<td>Paraguay</td>
<td>7 May 2013</td>
</tr>
<tr>
<td>South Africa</td>
<td>20 June 2013</td>
</tr>
</tbody>
</table>

Source: International Labour Organisation

The remaining 6 countries which have ratified the convention 189 but it has not been in force yet are shown in the following Table. As per the rule, the convention 189 will come into force in these countries one year after ratification by the country.
Table 3.2: List of countries that have ratified the Convention (C189) and where it is not in force yet -

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guyana</td>
<td>9 August 2013</td>
</tr>
<tr>
<td>Germany</td>
<td>20 Sept 2013</td>
</tr>
<tr>
<td>Ecuador</td>
<td>18 Dec 2013</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>20 Jan 2014</td>
</tr>
<tr>
<td>Argentina</td>
<td>24 March 2014</td>
</tr>
<tr>
<td>Colombia</td>
<td>9 May 2014</td>
</tr>
</tbody>
</table>

Source: International Labour Organisation

3.3.5 Legal Developments post C189 - International Scenario

As stated in ILO (2013) report, at least 20 countries (other than the countries which have ratified C189) have initiated ratification procedures or are taking steps in this direction. Some of the initiatives are presented below.

- In Brazil, the domestic workers were given equal rights with other workers through a constitutional amendment in March 2013. The new provisions granted 16 new rights for domestic workers, such as the right to overtime pay, a maximum eight hour working day and 44 hour working week. Some of the changes are slated to come into force immediately while others will be regularized in a phased manner. The amendment also includes a new provision for employers’ contribution to a fund for domestic workers which will be made available upon compulsory redundancy, death and other contingencies⁶.

• In Thailand, on 9 November 2012, a new Ministerial Regulation No. 14 (B.E. 2555) entered into force improving workplace rights for domestic workers in the country. Issued under the Labour Protection Act B.E. 2541 (1998), the Regulation aligns several aspects of the legislation with the Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201).^7

• The Government of Spain promulgated Royal Decree 1620/2011 of 14 November 2011, regulating the employment relationship of service within the family household. The Decree entered into force the day after its publication in the Official Gazette on 17 November 2011, and will be effective from 1 January 2012. The Royal Decree updates the rules governing the labour relationships of domestic employees and sets out to improve working conditions in the sector by bringing them as far as possible into line with those of other workers^8.

3.4 An Overview of Legislative Mechanism for Domestic Workers in India

3.4.1 This section presents a brief history of unsuccessful attempts at legislation to regulate the domestic work which unfortunately underlines the resistance and neglect on the part of government to regulating this sector through legislation.

• As early as 1959, a Domestic Workers (Conditions of Service) Bill was moved in the Rajya Sabha as a “private member’s” bill, but it was never enacted. The All India Domestic Servants Bill, which was introduced in the Lok Sabha,...

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included clauses for minimum wages, maximum hours of work, a weekly day of rest, fifteen days paid leave annually, casual leave, and the maintenance of a register of domestic workers by the local police. The bill lapsed. In 1972 and 1977, two “private member” bills [the 1972 Domestic Workers (Conditions of Service) Bill and the 1977 Domestic Workers (Conditions of Service)] Bill were introduced in the Lok Sabha. These bills would have brought domestic workers under the purview of the Industrial Disputes Act, but they too were allowed to lapse. The House Workers (Conditions of Service) Bill, which was formulated in 1989, was not enacted either. (Armacoast, 1994)

- The recommendations of the statutory National Commission on Self-Employed Women and Women in the Informal Sector in 1988 included establishing a system of registration for domestic workers, a minimum wage, and legislation to regulate conditions of employment, social security and security of employment. (Shramshakti, 1988) These were not followed up by any legal action.

- In recent times, the National Commission on Women (NCW) has presented a draft bill - Domestic workers (Registration, Social Security and Welfare) Act 2008

- National Commission on Women has also proposed another draft bill for domestic workers in 2010 entitled “Domestic workers Welfare and Social Security Act 2010”

- Another draft bill - Domestic Workers (Regulation Of Employment, Conditions Of Work, Social Security And

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Welfare Bill 2008\(^\text{11}\) was proposed by Nirmala Niketan and National Campaign Committee For Unorganized Sector Workers.

In 2003, the National Domestic Workers’ Welfare Trust and other organizations filed a public interest litigation (PIL) in the Supreme Court for a comprehensive legislation for domestic workers in India, that has been admitted.\(^\text{12}\)

3.4.2. The Task Force on Domestic Workers\(^\text{13}\)

The task force on Domestic Workers was set up on December 29th, 2009, initially for a period of three months, with the terms of reference to:

I) Evolve Policy Framework for domestic workers in context of:
(a) Regulatory Mechanism
(b) Providing Welfare Measures

II) Generate knowledge in order to evolve an India Paper for presentation /consideration during the 99\(^{\text{th}}\) session of the ILC in Geneva, June 2010.

The task force produced its First Report on March 18, 2010, which contained a set of recommendations. The report and the recommendations were subsequently adopted by the government on April 6, 2010.

The tenure of the Task Force was extended further to continue on the deliberations regarding the welfare measures that can be extended to the domestic workers, as well as look into the regulatory measures.

The Task Force on Domestic Workers, pointing out the technicalities involved in legislation for domestic workers, commented on the issue as follows - ..... the domestic workers


\(^{12}\) [http://ndwm.org/?page_id=181](http://ndwm.org/?page_id=181) accessed 5/2/2012

\(^{13}\) "Realising Decent Work" (2011) Final Report of the Task Force on Domestic Workers
are not included in the scope of these (existing) laws because of the constraints in the definition of either the ‘workmen’, ‘employer’ or ‘establishment’. The nature of work, the specificity of the employee employer relationship, and the work in private households instead of public and private establishments, makes the coverage of domestic workers under the existing laws more challenging. To include the domestic workers under the above mentioned laws, the definitions will have to be amended.\(^\text{14}\)

**First Report of the Task Force on Domestic Workers March 2010**

Following observations emerge from the first report of the Task Force\(^\text{15}\)

- The report referred to the statistics on domestic workers which vary from 4.75 million (NSSO, 2004-05) to 6.4 million (Census 2001) and further to 90 million in India, emphasizing the fact that Domestic work has been increasing rapidly over the years (222% since 1999-2000). Moreover, the report pointed to the possibility that the data on domestic workers may be underreported because of several reasons, the main being domestic work not treated as ‘real’ work leading to large instances of undeclared work, and secondly, domestic work can be a part time occupation, with workers taking up other seasonal occupations.
- It also recognized domestic work as the largest female occupation in Urban India.
- The report observed that a large population of domestic workers comes from vulnerable communities and backward areas. Most domestic workers are poor, vulnerable, illiterate,

\(^{14}\) Ibid pp25
\(^{15}\) Ibid annexure 2
unskilled and do not understand the urban labour market. Many are maltreated, exploited, ill-treated and suffer violence while many are sexually abused.

- The domestic workers may also include child domestic workers, in spite of the Government banning the utilization of services of child workers below 14 years of age in any domestic work.

- The report highlighted the main issues that concern domestic work such as lack of decent wages and work conditions, no defined work time, no weekly offs, loneliness, violence, abuse, and sexual harassment at workplace, victimization at the hands of traffickers/placement agencies, forced migration, lack of welfare measures (such as health insurance, maternity protection, old age security), and lack of skills development resulting in stagnation and no career growth.

- The report admits to non inclusion of domestic work in the existing labour legislation and attributes it to the constraints in the definition of the ‘workmen’, ‘employer’ or ‘establishment’.

- It further refers to the nature of work, the specificity of the employee employer relationship, and the work in private households instead of public and private establishments which makes the coverage of domestic workers under the existing laws more difficult.

- The report concludes that the definitions will have to be amended in order to include the domestic workers under the existing laws.

- The Task Force recommended that a Code of Practice should be drafted as a practical tool to protect the rights of the domestic workers at the workplace.
• The Code should cover a large number of issues that may need to be defined under the category of working conditions, contract of employment, probationary periods, remuneration (wages, payment in kind, regular payment of wages, overtime), implications of employer-provided accommodation, regulating living conditions, working time for live-in workers, working time, night work, weekly rest periods, termination of employment and notice periods etc.

• The code of practice should be validated by the stakeholders before being implemented.

• This code of practice should be treated as a regulatory guideline till a separate legal instrument is drafted and/or domestic workers are covered under existing regulatory labour legislations.

• The Task Force members acknowledged and noted the progress made under the Modular Employable Skills (MES) Scheme administered by Ministry of Labour and Employment.

• Under the scheme, a pilot training programme to skill and re-skill domestic workers/household assistants across the Delhi and Noida region project has been initiated in partnership with the Directorate General of Employment & Training (DGET) Ministry of Labour and Employment and Government of Delhi and International Labour Organization (ILO).

• The Task Force members felt that the following issues deserved immediate concern-

• Absence of any social or welfare schemes for the domestic workers.

• Absence of any regulatory mechanism for the domestic workers, their employers and the placement agencies.

• Strengthening the skill/re-skill training opportunities for the domestic workers.

100
The Task Force recognized that regulation of domestic work through legislation will require extensive consultation and interaction with different stakeholders over time. Hence it suggested that the first phase can be initiated by extending welfare benefits through extending the existing, well-established schemes like the Rashtriya Swasthya Bima Yojana (RSBY) to domestic workers. The task force felt that the domestic workers should also have maternity benefit, life and disability benefit, and old age pension coverage which can be added on gradually.

In the second phase, attempts at specific legislations could be initiated. These would involve in-depth deliberations, clarity on the definitional issues, the employee-employer relationships and implementation mechanisms.

The task force suggested a working definition of the Domestic Worker as follows:

"Domestic Worker” means, a person who is employed for remuneration whether in cash or kind, in any household through any agency or directly, either on a temporary basis or permanent, part-time or full time to do the household work or allied work, but does not include any member of the family of an employer”\(^\text{16}\).

The identification and registration is to be entrusted to the state labour departments.

3.4.3 The first set of recommendations of the Task Force is as under.

- Extension of the welfare schemes like health and maternity benefits, death and disability benefits, and old age benefits to the domestic workers.

\(^{16}\) Ibid pp 32
The RBSY scheme should be the first welfare scheme to be extended to the domestic workers. The smart cards issued under the RBSY can be later used to load other welfare schemes, rolled out for domestic workers.

Domestic workers should be identified and registered by the State Labour Department.

The domestic work should be included in the Central list of scheduled employments under a notification under the Minimum Wages Act 1948, for fixation and enforcement of minimum wages in respect of domestic workers. The state governments, which have not fixed minimum wages for domestic work, should fix minimum rates of wages for the domestic workers, as labour is a state subject.

The Ministry of Labour and Employment should issue notification for mandatory registration of all placement agencies and individuals providing placement, sourcing and recruitment services relating to domestic work, under the Shops and Establishment Act, 1953. The placement agencies should maintain and make available all necessary records pertaining to domestic workers placed, details of the employers, wages, mode of payment of wages, working hours, nature of work, and duration of placement and the copy of the contract.

The Task Force recommends drafting of a National Policy for the Domestic Workers covering the welfare, regulatory, and skill development issues. The National Policy on Domestic Worker should also include a Code of Practice, which should serve as a guideline for protecting the domestic workers and regulating their work conditions and wages.
• The skill and re-skill training program initiated by ILO, Ministry of Labour and Employment (MoLE) and Delhi Government should be scaled up and replicated in different states of India in a phased manner.

Implementation of the Recommendations of the First Report

The Final Report of the Task Force submitted in September 2011 examined the action taken by the government in regard to its recommendations of the first report. It made the following observations—

• A proposal to extend Rajya Swasthya Bima Yojana (RSBY) to domestic workers was submitted to the Cabinet, which was subsequently approved by the same on 23 June 2011.\(^\text{17}\)

• A letter was sent on 1 July 2010 from the Secretary of Labour, Ministry of Labour and Employment to the State Chief Secretaries requesting them to take necessary steps for inclusion of domestic workers as employment in the schedule and for fixing minimum rates of wages for domestic workers in respective States as a matter of priority.\(^\text{18}\)

• A letter was sent on 13 October 2010 from the Director General Labour Welfare, Ministry of Labour and Employment to the Principal Secretaries requesting them to take necessary steps for registration of placement Agencies providing Domestic workers under the Shops and Establishment Act, to be undertaken as a matter of Priority.\(^\text{19}\)

• The Task Force was entrusted with the formulation of National Policy for Domestic workers which was accordingly

\(^{17}\) Ibid annexure 3
\(^{18}\) Ibid annexure 4
\(^{19}\) Ibid annexure 5
submitted to the government along with the final report of the Task Force in September 2011.

3.4.4 Draft National Policy on Domestic Workers\(^2\)

1: Preamble

The Preamble of the Policy puts forth the commitment of the government towards making decent work a reality for the domestic workers.

Section 1.2 of the Policy highlights the importance of domestic work as a sector that promotes employment directly as well as indirectly. However, it also identifies the ills that beset this sector such as:

- invisibility and underreporting and undervaluation of work
- Preponderance of vulnerable communities
- Illiteracy and vulnerability arising out of it
- lack of job security and lack of decent work conditions
- violence, abuse, and sexual harassment at workplace
- victimization at the hands of traffickers/placement agencies,
- insufficient coverage by social protection measures
- limited access to skills development
- Lack of regulation due to peculiar nature of work place
- Presence of unregistered unscrupulous placement agencies

Section 1.3 advocates that domestic work deserves particular attention rather than exclusion. It also calls for inclusion of domestic work in the existing legislations as well as creation of legislations specific to domestic workers.

Section 1.4 reiterates the fundamental right to equality to all citizens and the fundamental principles of right to livelihood and rights at work apply to all women and men who engage in

\(^2\) Ibid annexure 1
economic activity including domestic work. The domestic workers—like other workers—have the right to:

- Minimum wage protection and suitable limitation of payments in kind;
- Normal hours of work, including compensation for overtime, and suitable daily and weekly rest periods;
- Paid annual leave and sick leave;
- Social security coverage including maternity benefits;
- Safe and healthy place to stay and sufficient food (if the worker stays in the home of the employer i.e. a live-in worker);
- Protection against sexual harassment at the place of work;
- Safe working environment and protection from hazards and accidents at workplace;
- Work with dignity and respect;
- Register as workers with the Labour Departments and be recognized as workers;
- Access schemes and benefits which are available or will be made available to other categories of workers.

Section 1.5 suggests that suitable amendments be made in all the relevant legislations applicable to workers generally in order to explicitly include domestic workers and to enable their effective implementation and enforcement.

2: Aims and Objectives

Section 2.1 of the Policy places an obligation on the Central and State Governments to take effective and appropriate measures to ensure that domestic workers are able to exercise their labour rights as Guaranteed under the Indian Constitution. The policy aims to promote domestic workers’ human rights and fundamental principles and rights at work by bringing them in
the ambit of labour legislations, and relevant labour policies and schemes that are available to other workers in India. The Policy also lays down a labour rights framework to facilitate the inclusion through amendments in Central and State Labour legislations where required, and setting up of legislative mechanism to address any inconsistencies, insufficiencies and inapplicability arising from their specific nature of work for which existing legislations are not able to address.

Section 2.2 of the Policy aims at providing a direction for Central and State Governments to establish formal rights of domestic workers and to ensure that the domestic workers can exercise their rights by:

- Explicitly and effectively expanding the scope of applicable legislations to domestic workers by making necessary amendments in legislations, policy and schemes to grant domestic workers rights that are enshrined in laws for other categories of workers;
- Setting up of legislative mechanism to address any inconsistencies, insufficiencies and inapplicability arising from their specific nature of work for which exiting legislations are not able to address;
- Setting up an institutional mechanism which provides for social security cover, social protection benefits, fair terms of employment, grievance redressal and disputes resolutions;
- Facilitating the process to register as workers and being recognized as workers;
- Promoting the rights of domestic workers to organize, form their own associations or join an organization of their choosing;
- Promoting the skill development as one of the entry points to professionalize domestic work and enhance employability, wages and living and working conditions;
- Setting up necessary mechanisms to protect the rights of domestic workers who seek work abroad;
- Setting up necessary mechanisms to regulate placement agencies;
- Establishing the roles and responsibilities of the government, the private household employer and the workers and employers organizations, including through the adoption of the Code of Practice;
- Creating public awareness of domestic work as legitimate labour market activity and the household employers’ obligations under the law to provide decent working and living conditions;

3: Scope and Definition.
Section 3.1 defines Domestic worker as a person who is employed for remuneration whether in cash or kind, in any household through any agency or directly, either on a temporary or permanent, part time or full time basis to do the household work, but does not include any member of the family of an employer.
Section 3.1.1 states that based on the hours of work and nature of employment relationship, the domestic workers can be:
- Part-time worker i.e. worker who works for one or more employers for a specified number of hours per day or performs specific tasks for each of the multiple employers every day.
- Full-time worker i.e. worker who works for a single employer every day for a specified number of hours (normal full day hours).
work) and who returns back to her/his home every day after work.

- Live-in worker i.e. worker who works full time for a single employer and also stays on the premises of the employer or in a dwelling provided by the employer (which is close or next to the house of the employer) and does not return back to her/his home every day after work.

Section 3.2 defines Employer as a person or a household who employs or benefits from the employment of domestic worker/s, irrespective of the number or type of domestic worker/s employed, or the nature of the employment or the time period for which such employment exists or the nature of activity/activities performed by the domestic worker/s.

Section 3.3 defines Placement agency/agents as any organization/ agency/ institution/ association/ union, public or private business or individual/s providing placement, sourcing and recruitment services relating to domestic workers.

4: Substantive Provisions

Section 4.1 advocates inclusion of domestic workers into legislative framework and designing specific legislative mechanism for them wherever called for. The Central Government, through the mechanisms set up to implement this Policy, has been called upon to identify and report the nature of the constraints in including domestic workers into existing major labour legislations and other laws, programs and policies. In such cases the appropriate Government ought to achieve equivalent protection for domestic workers by other means, including legislative means, as necessary, and address any inconsistencies, insufficiencies and inapplicability which existing legislations are not able to address.
Section 4.2 identifies that the domestic workers have the right to register as workers with the State Labour Departments. Such registration is to certify the worker status of the domestic workers, which in turn will facilitate their access to rights and benefits accruing to them as workers and enable them to seek legal remedies in case of disputes related to wages and conditions of work/service between the domestic worker and the employer of the domestic worker.

Section 4.3 states that the domestic workers have the right to form their own associations, trade unions or join an organization of their choosing. The Central Government in collaboration with workers organizations and organizations of domestic workers shall identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers’ organizations of their own choosing and to the right of organizations of domestic workers to join workers’ organizations, federations and confederations.

Section 4.4 states that domestic workers have a right to fair terms of employment including minimum wage protection, limitations on payments in kind, normal hours of work, rest periods, paid leave etc, access to social security, work in safe and healthy workplaces, protection from abuse, harassment and violence. Domestic workers shall have social security and social protection including health and maternity benefits, death and disability benefits, old age benefits. Implementation of health insurance scheme, RSBY to domestic workers shall be undertaken as a matter of priority.

Section 4.5 provides for protection of domestic workers who seek work abroad from abuse and exploitation. Legislations and
policies need to ensure that domestic workers taking up work abroad or accompanying their employers abroad -

• shall be appropriately briefed.
• shall be made aware about their rights and privileges in the country of work.
• shall be trained as appropriate as part of the existing emigration procedures of the Ministry of Overseas Indian Affairs.

Furthermore, the Ministry of Labour and Employment shall, in collaboration with the Ministry of Overseas Indian Affairs, set up a mechanism to ensure that-

• The potential migrant domestic workers receive written job offer or contract of employment addressing the terms and conditions of employment prior to crossing national borders for the purpose of taking up domestic work to which the offer or contract applies.
• The terms of conditions of the contract must be explained to the worker in a language which is understood by her/him.
• The potential migrant domestic workers are briefed about the helpline numbers or the contact points, such as embassies, or names and address of the civil society organizations/workers organizations in the country of work, which can provide assistance and relief in case of infringement of any rights, abuse or conditions of distress, which the domestic workers may face.

Section 4.6 advocates the right of the domestic workers to enhance their professional skills and employment opportunities through skills development. Towards this objective, the State Governments are encouraged to include domestic work as one of the occupations in the State level implementation of the National Skills Development Initiative. It also suggests that
appropriate evaluation mechanism is created to monitor the outcomes of the training programs in terms of competency built, the effect of the training on job growth, job enrichment, enhancement of wages and quality of work and family life and living conditions of the domestic workers who enroll and successfully complete the training programs.

Section 4.7 includes provision for regulation, mandatory registration of placement agencies and maintenance and scrutiny of records of these agencies.

Section 4.8 of the policy concerns grievance redressal mechanism for the domestic workers. It advocates easy access to courts, tribunals or other dispute resolution procedures for domestic workers, setting up an appropriate grievance redressal mechanism to protect the rights and welfare of domestic workers and to provide a single window access to domestic workers for all their needs and suggests amicable and lawful settlement of disputes.

Section 4.9 deals with the issue of creating awareness about employers’ obligations through a Code of Practice and through dissemination of the message to the society that domestic work is a legitimate labour market activity which is undertaken in an employment relationship and that domestic workers are entitled to enjoy fair terms of employment and decent working and living conditions.

**5: Procedure for Implementation**

Section 5.1 states that the Ministry of Labour and Employment, Government of India, shall be responsible for establishing the mechanisms to implement the National Policy on Domestic Workers through an Implementation Committee.

Section 5.2 outlines the functions of the Implementation Committee such as monitoring the implementation of the Policy,
defining the functioning of a tripartite institutional mechanism at the State level, function as information source for domestic workers and employers on areas relating to workers’ rights. Section 5.3 states that the Ministry of Labour and Employment will also facilitate regular situational analysis and assessments of living and working condition as well as collection of accurate statistics on domestic workers through national statistical instruments.

Section 5.4 provides for establishment of an appropriate tripartite institutional mechanism, adequately representative in nature, on Domestic Workers at the State levels to implement the substantive provisions of the Policy.

Section 5.5 entrusts the respective State Governments with setting up of appropriate grievance redressal mechanisms, which will protect the rights and welfare of domestic workers and will provide a single window access to domestic workers for all their needs.

Sections 5.6, 5.7 and 5.8 provide that the Central Government and respective State Governments shall facilitate and encourage all the stakeholders to spread awareness about this Policy to domestic workers and their employers, to continue their efforts to organize domestic workers and employers of domestic workers with a view to engage in a constructive social dialogue in the implementation of this Policy, the gender specific concerns of the women domestic workers like provision for crêche should be built into such initiatives.

6: Timeline for Implementation

Section 6.1 to 6.4 provide for a time bound programme of implementation of the policy and preparation of report by respective authorities.
Section 7 of The Policy covers the financial provisions for the implementation of the policy in general terms. The draft national policy on domestic workers was submitted to the government along with the final report of the Task Force in September 2011. Although the policy itself contains a timeline for its implementation, the Central government has not acted upon it. According to the recent news reports (The Times of India, New Delhi 2013), serious concerns were raised about the implications of the policy especially the formation of trade unions by domestic workers in the cabinet meeting held for discussing the National Policy on domestic workers. As such the adoption of the policy stands deferred.

3.4.5 Initiatives at the Union Government with respect to domestic work-

- The Government of India has amended the Central Civil Service Conduct rules to prohibit Civil Servants from employing children below the age of 14 as domestics.
- An important Central legislation, The Unorganised Sector Workers’ Social Security Bill, 2007 which was passed in 2008, includes domestic workers in the unorganised sector of workers.
- Domestic workers are included in the Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act 2013.

However, a Central Act addressing the specific issues of work conditions and welfare of Domestic Workers is still in the waiting.
3.4.6 Initiatives at the State Governments with respect to domestic work –

Several state governments have initiated legislative mechanisms in order to govern some aspects of domestic work. They are as follows-

- **Minimum Wages** -

A few of the states in India have included domestic work in the list of scheduled employment and fixed Minimum Wages for the domestic workers. As per the Minimum Wages Report for the year 2012, the details of these provisions are as follows:

**Table 3.3: State-wise Minimum Wage Rates for domestic workers**

<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Andhra Pradesh</td>
<td>190.91</td>
</tr>
<tr>
<td>2</td>
<td>Bihar</td>
<td>145.00</td>
</tr>
<tr>
<td>3</td>
<td>Dadra and Nagar Haveli</td>
<td>174.40</td>
</tr>
<tr>
<td>4</td>
<td>Haryana</td>
<td>191.04</td>
</tr>
<tr>
<td>5</td>
<td>Jharkhand</td>
<td>150.38</td>
</tr>
<tr>
<td>6</td>
<td>Karnataka</td>
<td>186.40</td>
</tr>
<tr>
<td>7</td>
<td>Kerala</td>
<td>195.00*</td>
</tr>
<tr>
<td>8</td>
<td>Odisha</td>
<td>150.00</td>
</tr>
<tr>
<td>9</td>
<td>Rajasthan</td>
<td>167.00</td>
</tr>
<tr>
<td>10</td>
<td>Tripura</td>
<td>57.69**</td>
</tr>
</tbody>
</table>

*In case of Domestic Workers in addition to minimum wages at least two times of food is also included per day; pp 45-46

**In addition food, lodging, clothing and medical allowance Rs.100 pm; pp 97


However, the implementation of these provisions is far from satisfactory. (Neetha N., 2013a)
• **Social Security**

• The state government of Kerala has included Domestic Workers in the Kerala Artisan and Skilled Workers’ Welfare Fund, thereby allowing them an access to Social Security Schemes. (Bhattacharya Shreya, 2009).

• The Tamil Nadu Government included Employment in Domestic Work in the schedule of the Tamil Nadu Manual Labour Act 1982 in 1999. It also established “Tamil Nadu Domestic Workers Welfare Board” on January 22, 2007. The preliminary notification for the Minimum Wage Act for Domestic Workers was passed in August 2007.21

• The state government of Haryana has decided to implement the Rashtriya Swasthya Bima Yojna (RSBY) for domestic workers.( The Times of India, 2013a)

• The State government of Meghalaya has indicated that inclusion of domestic workers under the ambit of the Minimum Wage Act is likely in the near future. The domestic workers in the state will also be enrolled under the Employees’ State Insurance Scheme. (The Times of India, 2013b)

### 3.4.7 Initiatives by Government of Maharashtra

In Maharashtra, the attempts at regulating the domestic work and providing social security for them have been made in the form of –

• Section 27 (A) of the Maharashtra State Public Service Conduct Act, 1997 prohibits government employees from employing children aged below 14 years as domestic workers.

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• The Government of Maharashtra had published a code of conduct with reference to domestic work on 29/1/2000 for Mumbai, Thane, Pune and Nagpur. However, it remained largely ineffective. Thereafter, a Government Resolution (G.R.) was issued on 10/8/2000. The G. R. provided for a weekly holiday, 15 days paid annual leave with travelling allowance for visiting native place, bonus equivalent to one month wages after completion of one year of employment, allowance for medical expenses, and increment in wages to be effective immediately. The G.R. also provided for constituting a committee including members of registered organizations of domestic workers and nominee from the Maharashtra Labour Welfare Board. The Maharashtra Labour Welfare Board was to be entrusted with the registration of both the domestic workers and employers of domestic workers. This G.R. was to be implemented initially in Brihanmumbai, Thane, Pune, Nagpur, Nashik and Aurangabad. A draft proposal for regulating work conditions and welfare of domestic workers was also prepared in 2003 (Bandhkam Mazdoor Sabha Pune, 2006).

• However, the said G.R. and the draft bill of 2003 remained on paper and the domestic workers’ struggle for decent work continued.

• The passing of Maharashtra Domestic Workers Welfare Board Act, 2008 was a major step in creating a social security mechanism for domestic workers. The Act and the subsequent establishment of the welfare board for domestic workers in the state are discussed in the following segments.

• As per the news reports, the state government of Maharashtra has announced its intention to set minimum wages for domestic workers. A process of inviting comments
3.4.8 The Maharashtra Domestic Workers Welfare Board Act, 2008.

- **Short title and commencement** :-
  - This Act may be called the Maharashtra Domestic Workers Welfare Board Act, 2008.

- **Constitution of the Board**-
  - A Board or more Boards for one district or one Board for more than one district can be constituted,
  - The Board shall consist of members nominated, from time to time, by the State Government representing the employers, the domestic workers and the State Government.
  - The members representing employers and domestic workers shall be equal in number, and the members representing the State Government shall not exceed one-third of the total number of members representing employers and domestic workers.
  - The Chairman of the Board shall be one of the members appointed to represent the State Government, nominated in this behalf by the State Government.
  - The Board shall, with the approval of the State Government, appoint a secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.
  - The Secretary of the Board shall be its Chief Executive Officer

- **Functions of the Board** –
  - Registration of domestic workers as beneficiaries under the Act

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22 Published in Maharashtra Government Gazette on 6th January 2009.
• To grant following benefits to beneficiaries which they are entitled to under the Act:
  • provision for immediate assistance to a beneficiary in case of accident
  • financial assistance for the education of children of the beneficiary
  • provision for medical expenses for treatment of ailments of a beneficiary or his such dependent;
  • provision for maternity benefit to the women beneficiaries: restricted to two children only;
  • make payment of funeral expenses to the legal heir on the death of the beneficiary;
  • such other benefits as may be decided by the Board, from time to time;
  • to constitute and administer the fund for the purposes of this Act
  • to appoint a secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act
  • such other functions as may be assigned to it by the State Government, from time to time.

• **Registration of domestic worker as beneficiary**

- Every domestic worker who has completed eighteen years of age, but has not completed sixty years of age and who has been engaged in any domestic work shall be eligible for registration as a beneficiary under this Act.
- An application for registration shall be made in such form as may be prescribed and shall be submitted to the officers authorised by the Board in this behalf.
• Every application under sub-section (2) shall be accompanied by such documents together with such fees as may be prescribed, from time to time.

• If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made there under, he shall register the name of the domestic worker as a beneficiary under this Act or he may for reasons to be recorded in writing reject the application: Provided that, the application for registration shall not be rejected unless the applicant has been given a reasonable opportunity of being heard.

• Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer authorised by the Board in this behalf and decision of the Secretary on such appeal shall be final:

  Provided that, the Secretary may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the applicant was prevented by sufficient cause from filing the appeal in time.

• The Secretary of the Board shall cause to maintain such registers as may be prescribed.

• **Identity Card.**

  The Board shall give to every beneficiary an identity card, with his photograph duly affixed thereon.

  The Identity Card shall be in such form and shall contain the name, address, photograph of the beneficiary and such other particulars as may be prescribed.

• **Cession as beneficiary.**

  A domestic worker who has been registered as a beneficiary under this Act shall cease to be as such when he is not
engaged in the domestic work or when he has not paid his contribution under section 16 for a continuous period of not less than one year, unless the payment of contribution is waived by the Board under the proviso to section 16.

- Provided that, if the Secretary of Board is satisfied that the non-payment of contribution was for a reasonable ground and that the domestic worker is willing to deposit the arrears, he may allow the domestic worker to deposit the contribution in arrears and on such deposit being made, the registration of domestic worker shall stand restored.

- Notwithstanding anything contained in sub-section (2), if a person had been the beneficiary for at least three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be decided by the Board.

**Contribution of domestic worker** :-

- A domestic worker who has been registered as a beneficiary under this Act shall until he attains the age of 60 years, contribute to the fund such amount per month, as may be prescribed.

- Provided that, the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

### 3.4.9 Evaluation of the Act

- **Age limit for the domestic workers**
  
The prescribed age limit in the law does not take into account the incidence of elderly domestic workers working in their old age due to economic compulsions. This amounts to excluding the section that requires the protection most.
• **Voluntary registration**  
  The registration of domestic workers is left to be voluntary. In the absence of effective information dissemination networks, many of the domestic workers remain outside the purview of the law.

• **No provision for the registration of the employers**  
  The Act does not provide for the registration of the employers of domestic workers. This is a serious lapse in legislation. As a stakeholder, employer households must be brought under the ambit of law.

• **No provision for the contribution from the employer**  
  A levy or a social security contribution from the employers is a social and economic imperative. As employers, they should bear a part of social security contributions of domestic worker. However, as the registration of employers is not provided for, any financial contribution from them is out of question. The Act remains silent on the issue.

• **No regulation of work conditions**  
  The working conditions of the domestic workers like wages, paid leaves, bonus remain unregulated.

• **Issues like provident fund, pension, and gratuity not covered**  
  The Act covers only selective measure of social protection and has not provided for explicit mechanisms for old age benefits like pension, gratuity and provident fund.

• **The time gap** between the passing of the Act and the formation of the Welfare board has adversely affected the registration process for the domestic workers in the age group nearing 60.
3.4.10 Formation of the Maharashtra Domestic Workers Welfare Board in 2011

- Further, the Government of Maharashtra vide Notification dated 12th August 2011, constituted the Domestic Workers Welfare Board for the State of Maharashtra.
- The Board was initially granted a fund of Rs. 6.5 crores. (The Hindu, New Delhi 2012)

Benefits for the Registered Domestic Workers

- Assistance in case of Accidents
- Financial Assistance for the Children's Education
- Medical Expenses Assistance for treatment of ailments to him / her and the dependents.
- Maternity Benefits to the Women
- Funeral Expenses assistance to the legal heir on the death
- Other Benefits as decided by the Board from time to time

The following schemes are currently operational with the welfare board

- Janashree Bima Yojana
  - As part of the life insurance scheme, a domestic worker can avail of following benefits-
  - In the case of natural death of the beneficiary; legal heir gets the amount of Rs.30,000/-
  - In the case of accidental death of beneficiary; legal heir gets the amount of Rs.75,000/-
  - In the case of accidental permanent disablement; beneficiary get Rs.75,000/-
  - In the case of accidental partial disablement; beneficiary get Rs.37,500/-
• Under the Janashree Bima Yojana, registered domestic workers whose children are studying in Classes IX to XII will get Rs 100 per month to aid the education of the eldest and the second child.

• **Honorarium (Sanman Dhan) for the elderly domestic workers**
  A onetime honorarium of Rs. 10,000 is announced for the domestic workers registered with the welfare board who have completed 55 years of age on 1st August 2013. Out of the 2,09,752 registered members of the Board across the state, 9109 members are eligible for the scheme. A provision of Rs. 9.11 crores has been made for this scheme. From the 89,002 registered members from the Pune region, 4160 members have been found eligible for the scheme (Sakal, 2013). Till date the Board has given a benefit to 1902 registered domestic workers across the state amounting Rs.1, 90, 20,000/-.

• **Maternity Benefit of Rs. 5000 for two children**
  The registered domestic workers are eligible for maternity benefit of Rs. 5000 for two children.

• **Funeral Expenses of Rs. 2000**
  The family of the domestic worker will receive Rs. 2000 towards funeral expenses upon the death of the registered domestic worker. Till date the Board has settled 12 claims amounting Rs.24, 000/-.24

Some of the other schemes proposed by the Board are as follows-

- **Professional Training for the children of domestic workers**
  The children of the domestic workers who have completed education from 8th to 12th std are eligible for the professional training in retail, hotel and catering, printing, IT etc for the period of six months. The training will involve opportunity of working at an industrial establishment with a stipend. Of the total 4000 trainees, 1440 candidates will be selected from Pune region (Sakal, 2012).

- **Educational aides for the children of domestic workers**
  The state labour department has initiated a process to distribute laptops and tablets for the children of registered domestic workers. (The Times of India, Kolhapur, 2013c)

### 3.4.11 Functioning of the Board

- The Maharashtra State Domestic Workers Welfare Board started registering domestic workers in the state from 14th November 2011. In the first phase, eight districts Mumbai, Pune, Nagpur, Nasik, Aurangabad, Solapur and Thane- were covered. Later it was to be extended to the entire state.

- The documents verifying the age and address of the domestic worker and the letter from the employer declaring that the domestic worker is working at his/ her residence as domestic worker are necessary for registering along with the duly filled application form. The application also requires photographs of the domestic worker, registration fee of Rs. 30 and an annual fee of Rs. 60.

- The board also announced that separate registration camps, in addition to office of labour commissioner, will be organized
in case of areas with large number of domestic workers. The registered domestic workers will be issued an identity card with a 12 digit number. (Sakal, 2011).

- A news report indicated that the Maharashtra State Domestic Workers Board has registered 1.73 lakh domestic workers across the state by March 2013 with Pune topping the list with 54,300 domestic workers. (Pune Mirror, 2013).

- As per the information from the office of Assistant Commissioner of Labour, Pune, there were 68,600 registered domestic workers from Pune region as on 10th July 2014.

**Issues and concerns about the functioning of the Board**

- **Inadequate staff** –
  The registration of domestic workers, processing of the documents and issue of identity cards has been delayed because of inadequate staff. A news report indicated that out of the 50,000 domestic workers from Pune who have registered themselves with the board by May 2013 since it was set up in 2011 only around 4,000 have so far been issued IDs (The Indian Express, 2013). Moghe (2013) has also pointed out that only 12% of the domestic workers who have registered themselves with the board have received identity cards.

- **Inadequate Funds** –
  The initial grant with which the Board was set up was Rs. 6.5 crores. Considering the number of domestic workers in the state ranging between 10 -20 lakhs, this sum was considered extremely inadequate.
**Inadequate coverage** –
As per news reports, only around 1.9 lakh domestic workers in the state had registered for membership of the welfare board by May 2013 (The Indian Express, 2013).

- **Limited focus on welfare without any real effect on work conditions**–
  As Moghe (2013) has pointed out, the only real welfare measure so far introduced is the Janashree Bima Yojana. However, Moghe (2013) has maintained that many death claims of the registered domestic workers have remained pending due to inefficient working of the Board. The other benefits like maternity and funeral benefits are too inadequate. Further, the issues of work conditions like weekly off, minimum wages, paid leave have not been addressed by the Board.

- **Involvement of political parties and local leaders in the registration process**–
  It has been pointed out by the activists in the field that the domestic workers registration with the welfare board was utilized as political agenda by the candidates in the local corporation elections who offered to pay registration charges for them and kept the receipt. Several of the domestic workers who filled out the form did not have the receipts with them which made it difficult for them to access the welfare schemes offered by the board. (The Indian Express, 2013; Moghe, 2013)

The issue of regulating the paid domestic work through legislative means remains tricky as ever. The fact that the domestic work takes place within the confines of the private household has rendered the making and supervision of the
law difficult. However, for the same reason that the workplace is out of the reach of the law that the abuse against the vulnerable domestic workers is on the rise in the urban elite communities. The situation is further aggravated by the unscrupulous placement agencies and agents who exploit the vulnerabilities of the young girls. The need for a strong and practicable legislation is greater today than ever. An effective law for domestic workers should address the following issues-

- Regulation of work conditions like working hours, leaves, and rest periods.
- Fixation of minimum wage for domestic workers taking into account the specific nature of work for full time and part time workers.
- Introduction of old age benefits like pension along with strengthening of existing social security mechanisms.
- Involvement of employers in the working of welfare boards through their registration and monetary contribution.
- Recognition to the unions of domestic workers.
- Setting up of a specialized grievance redressal mechanism.