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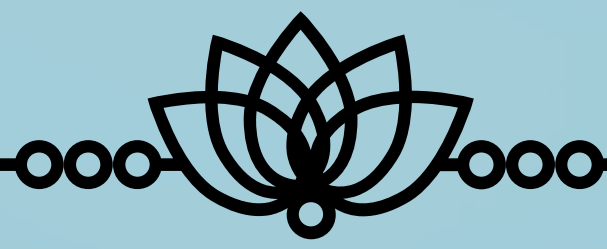
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Women in Domestic Work: Analysing the Lack of Comprehensive Social Security

Dr. Sandhya Kumari & Ms. Roopali Shekhawat

INTRODUCTION

Access to employment benefits has traditionally been associated with the sectoral engagement of the workers within the employer-employee relationship. However, the evolving labour dynamics have created newer work arrangements like gig and platform work and freelancing outside the said relationship. These independent arrangements not only augur well for the economy by creating more work opportunities but also provide workers with the flexibility to work on their terms. However, the downside of this arrangement is the absence of employment benefits, such as social security, leaving them exposed to vulnerabilities like sickness, old age, unemployment, and maternity.

The situation is even more precarious for the women workers, accounting for a substantial proportion of unorganized workers, majorly engaged in brick and kiln work, household jobs, and agricultural and farm work, often as unpaid labour. Over 42% of the agricultural workers are constituted by women. Already battling the socio-economic prejudices in society, these workers are subjected to a plethora of challenges, such as disparity in wages, exploitation, harassment and the absence of social security.



One significant area of work, largely occupied by women, that transcends the traditional employer-employee relationship is domestic work. These workers often engage in work at multiple households on an hourly basis and, despite being paid monthly are hardly treated as employees due to the private nature of their job, workplace and the employer. As per an ILO Report, nearly 75.6 million domestic workers, constituting 75% of the females, were engaged in private households with 80% lacking formal social protection. A study conducted in Gujarat reinforced the same, reflecting that 77 per cent of the domestic workers had a total family income of up to Rs.15000 per month.

Hence, despite being in servitude for centuries, domestic workers are still considered independent workers without entitlement to any benefits from the employers.

The advent of platforms like the broomies, bridging the gap between the workers and the end users, has further supported its transition as a separate area of work. While this arrangement opens a whole new horizon of opportunities for the workers and the employers, it also mandates the creation of a specific framework of laws for these workers, especially towards their social security.

SOCIAL SECURITY

Social security is the protection and support granted to individuals in case of interruption, reduction, or stoppage of income caused by any vulnerability as mentioned earlier. The branches of social security can be divided into two broad categories - income security and health care. Income security can be understood as a level of income (actual, perceived and expected), for meeting the present and future needs of a person during both working and non-working life. Health security, on the other hand, entails protective, preventive, curative and palliative measures undertaken to safeguard the health of the people. Social security systems



can be contributory (requiring beneficiary contributions, as in insurance schemes) or non-contributory (assisting without contributions). Over the years, social security has been upheld as a significant right necessary for the overall well-being of all. However, the absence of legislative protection for domestic workers prejudices not only their present income and health security but also their ability to build a secure future for themselves.

DOMESTIC WORK AND WOMEN: AN ANALYSIS



Domestic work is one of the ancient occupations in the world that has evolved from its primitive forms of slavery, and colonialism, to the modern contract of service. “Domestic work” is defined ‘as the work performed in or for a household or households and “domestic worker” means any person engaged in domestic work within an employment relationship. Even in modern times, it has retained elements of its erstwhile exploitative nature. Customarily, women are expected to excel at caregiving and home-making, often considered an unskilled task by employers and even the workers themselves.

Hence, these workers are unable to stand up for their rights or unionize, unlike the other skilled workers who bargain not only based on collectivism but their skill set.

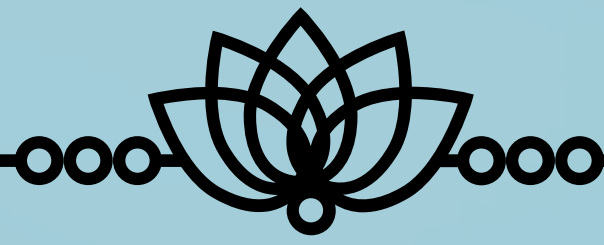
Domestic workers are typically classified as unorganized workers due to their informal engagement. As per a study, only 11.78% of the Indian domestic workers were entitled to paid leave, only 1.5% had access to social security benefits and only 1.38% had a written job contract.

Prima facie, unorganized workers and informal workers are synonymous with each other. However, the categorization of these domestic workers as formal or informal, based on the mandated accessibility of the aforementioned benefits, even within the unorganized sector can significantly improve their working conditions.

CONCLUSION AND SUGGESTIONS

Domestic workers form a significant part of the labour force however are faced with several challenges. Apart from ensuring access to the three basic benefits of paid leaves, proper contracts ensuring job security and social security, there is a need for state action on several other grounds. This includes policy and legislative measures aimed at skill development, unionization, improving digital and physical infrastructure including grievance redressal mechanisms, providing identification numbers, and ensuring basic working conditions with minimum wage is essential.

NGOs and Resident Welfare Associations can also be mobilized to support these workers in mandatory government registrations, raise awareness and enhance their participation in government schemes. These measures can help in creating a healthy and safe working environment for domestic workers.



Necessity for Social Security Protections for Gig and Platform Workers

Aman Gupta

INTRODUCTION

Until recently, our legal structures have focused on ‘employment’ status as the determinant of workplace protections due to the inherent imbalance in employment contracts. The distinction between an ‘employee’ v. ‘independent contractor’ assumes that independent contractors do not require protections due to lack of economic dependency and have stronger bargaining power. However, experiences, especially of the gig and platform workers working in triangular relationships in the delivery and transport services, contradict such assumptions. These are not often the lived realities as the structures reduce their agency which is typically available to independent contractors while also placing them outside the labour law protections.

Limitations of Current Legislation

In response, the Central and the State legislatures have introduced legislation on social security measures. However, the legislation has several limitations and problems. The Code on Social Security, 2020, distinguishes between different categories of workers, i.e., employees, unorganised workers and the gig and platform workers and the social protections available.



Gig and platform work is defined as a relationship occurring “outside of a traditional employer-employee relationship”. This distinction is problematic as there is no clear definition of what amounts to a traditional employer-employee relationship. The concept of employment has evolved, leading to definitional changes in legislation and the use of broader employment tests by the courts.

Secondly, the full gamut of rights available to employees under the other Labour Codes is not available to gig and platform workers. This includes wage protections, fair working conditions and access to formal dispute settlement processes. Specifically, on the issue of social security, the Governments’ obligations to frame schemes for gig and platform workers on one hand and other categories of workers are troubling. The Code provides that the Central government ‘may’ frame and notify social security schemes for gig and platform workers, i.e. framing of any

scheme is discretionary. On the other hand, for the unorganised workers, the Code provides that the Central and State governments 'shall' frame schemes for unorganised workers i.e. framing of schemes is obligatory, same as the Unorganised Workers' Social Security Act, 2008 ('2008 Act'). The basis for availing the benefits, once enacted, shall be registration, using an Aadhaar-based declaration, by the gig and platform workers. Additionally, the content of the social security provisions and the functioning of the schemes in the Code and (proposed) state legislation have been left to delegated legislation. This is concerning given the experiences of the 2008 Act, wherein not all the states have enacted the rules underlying the legislation.

This distinction seems to be based on the idea that gig and platform workers possess a greater degree of independence as compared to unorganised workers, thereby requiring lesser protections. However, this is not a heterogeneous experience and ignores the economic reality and working conditions of gig workers. A majority of the workers need to work daily and cannot take a break due to sickness or ill health. There are also no protections for them in the event of injuries or fatalities caused by workplace accidents. Thus, they and their families are left to fend for themselves in case of injury, illness or death. They also work a substantial number of hours, often in harsh conditions without access to amenities. In their present state of precarity, they are then solely reliant on the platforms for the provision of social security benefits. The Fairwork Report 2024 has noted that while some platforms have sought to provide basic



protections, the availability of protections is not universal across platforms.

The distinction may also create incentives for employee misclassification to reduce financial and compliance costs, which in turn can reduce the availability of permanent employment opportunities as a whole and negatively impact a shift towards formality. This distinction can also lead to substantial litigation between workers and platforms as each side seeks to get better terms for themselves.



RECOMMENDATIONS AND SUGGESTIONS

Thus, it becomes important that social security protection be accorded to gig and platform workers through an explicit statutory framework which places an obligation on the Central or State governments to provide the same. The corpus for the same should be collected from cess/contributions made by the platform industry. The framework should explicitly state the substantive elements and content of the protections in the principal legislation rather than delegated legislation. The protection should be based on ILO recommendations and should include access to fair working conditions. The level of protection should be provided with consideration for the principle of reduction of misclassification. Additionally, the legislation should also place an onus on enforcement machinery for regular checks on contracts to prevent misclassification. The Government of India has recently issued an advisory with an SOP to 'encourage' platforms and workers associated with them to register themselves on the e-Shram portal.[1] However, this must be formalised through a legislative mandate requiring the platforms to register workers at the time of onboarding, rather than placing the burden on the gig and platform workers.



Given the emergence and innovations of newer and newer forms of work relationships over the decades (fixed-term employment, contract labour and now gig and platform work) and limited coverage of present labour protections, perhaps the correct approach going forward would be to look at work as an overarching concept. This conceptualisation would then lead to the rights becoming available to every person who contributes by paid or unpaid work. This conception will require a reassessment and revision of our social relations and legal provisions, but it also has the potential to extend social security to a vast majority of our country.





THANK YOU



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