

**RIGHT TO DIGNIFIED LIFE OF THE DOMESTIC WORKING WOMEN: A
COMPARATIVE STUDY OF THE LEGAL FRAMEWORK IN INDIA AND SOUTH
AFRICA**

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ABSTRACT

With the growth of the tech world, the gap between the bourgeoisie (superior) and proletariat (inferior) is getting wider. Hence the fight for equal rights and dignified life in a democratic society is the present concern. The society which has reached the zenith of development in all aspects with the help of the domestic workers often ends up exploiting the latter. South Africa, despite its history of apartheid, actively establishes judicial and legislative milestones that recognize the human dignity of every individual. Whereas, India though being a developing nation is still lagging behind in this respect. This paper aims to depict a clear-cut comparison between the working conditions of domestic working women in India and that in South Africa. This paper tries to identify the lacunae in recent labour codes introduced in India with respect to addressing the rights and needs of the domestic working women. It argues for the need of a specific law recognizing the 'human dignity' of domestic working women in India. Furthermore, the inspirations that can be taken from South African legislations and judicial approaches are identified and suggested in this study. It would help to mould the Indian legal framework with regard to protecting the domestic working women's rights based on principle of 'inclusivity', thereby recognising their right to dignified life.

KEYWORDS: *Domestic Working Women, Human Dignity, Unorganised sector, Bargaining Power, Inclusivity, Humane working conditions*

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“*Ajyesthaso akanishthaso ete sambhrataro vahaduhu saubhagaya*”¹

THIS ABOVE text from Rig Veda means, ‘*No one is superior, none inferior. All are brothers marching forward to prosperity*’.² Where the ancient texts like this signifies substantive equality, a significant section of Indian society still lags behind in terms of achieving equality, dignity and social security – particularly ‘domestic working women’. These workers, often considered as part of the underclass, commonly having little education and minimal family support.³ Domestic work denotes to household works such as, cleaning floor, washing dishes and clothes, cooking food, taking care of children and elderly and other informal help at home, which is being carried out for the employer in lieu of wages.⁴ There are 75.6 million domestic workers worldwide, out of which 76.2 per cent are women.⁵

In India, 78.4 per cent of urban women workers are in the informal economy and about 9.4 per cent are domestic workers.⁶ ‘Domestic work’ industry acts as a major source of employment for the females. Over 50 million people are employed as domestic workers across India, with women constituting over 75 percent of this sector.⁷ Whereas, in South Africa over 1 million of people are engaged as domestic workers. However, by the end of June 2021, due to the COVID-19 Pandemic,

¹ Rig Veda, Verse 60.5.

² M. V. Nadkarni, “Is Caste System Intrinsic to Hinduism? Demolishing a Myth”, *Economic and Political Weekly*, available at: https://www.mvnadkarni.com/files/Is_Caste_System_Intrinsic_to_Hinduism.pdf (last visited on November 23, 2023).

³ Jennifer N. Fish, “Domestic Workers of the World Unite! A Global Movement for Dignity and Human Rights”, *New York University Press* (2017).

⁴ “Who are domestic workers”, available at: [⁵ *Ibid.*](https://www.ilo.org/global/topics/domestic-workers/who/lang-en/index.htm#:~:text=Of%20the%2075.6%20million%20domestic,employees%20than%20among%20male%20employees,(last visited on November 26, 2023).</p>
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⁶ Yola Verbruggen, “Coping with COVID-19: SEWA’s Domestic Workers on the Pandemic and Beyond”, *WIEGO*, November 9, 2020, available at: <https://www.wiego.org/blog/coping-covid-19-sewas-domestic-workers-pandemic-and-beyond> (last visited on November 28, 2023).

⁷ EPW Engage, “Where are the Laws to Protect the Rights of Domestic Workers in India”, *EPW*, available at: <http://www.epw.in.rgnul.remotexs.in/engage/article/domestic-workers-rights> (last visited on November 29, 2023).

the number has been reduced to 745,000 and same is the condition in India, though the numbers are not known. Nevertheless, there are a horde of people engaged in this ‘domestic work’ industry in both the countries. Domestic workers are the silent backbone of middle and upper class in India but domestic work is viewed through the prism of power, suppression and authority of memsahibs and sahebs. They are the ‘workers in the shadows’.⁸

The domestic working women seldom have any other scope to earn their livelihood. They find this job of easy virtue as the only means for their survival. On the other hand, taking the undue advantage of this helpless condition of the poor women domestic workers, the employers mostly treat them as slaves. Living a dignified life is far from their imagination. Rather getting the opportunity to work is a blessing for them. Domestic work, being an unregulated and unorganized sector, often becomes a shell of extreme discrimination and exploitation which is an anti-thesis of a dignified life. Right to live with dignity can be assumed as a bundle of rights, consisting of both positive and negative rights.

Moreover, factors like hike in number of elderly people and engagement of people in different formal and informal sectors create more opportunities for the growth of domestic work industry. This paper aims to analyse the existing laws and judicial pronouncements of the South Africa and India respectively and then gradually tries to strike a yardstick between the statuses of domestic working women of these two countries. At the very end of the exhaustive discussion and comparative analysis, the continuing study in the paper ends with few suggestions.

II. Meaning, Nature and Scope of Dignity and Dignified Life

Human dignity is a matter of social existence, a generic fact that characterises humanity since its evolution and throughout its development.⁹ In simple words ‘dignity’ means respect, honour and value. Every individual deserves to have a dignified life, to live with respect and be valued. The word ‘dignity’ is derived from a Latin word ‘*dignitas*’ which is considered as an honour of the

⁸ Pinky Chandran, “Workers in the shadows”, *Citizen Matters* (June 16, 2015), available at: <https://bengaluru.citizenmatters.in/workers-in-the-shadows-international-domestic-workers-day-7442> (last visited on April 24, 2022).

⁹ Nicoleta-Ramona Predescu, Human Dignity - A Right or a Principle of Human Rights, 6 *Conferinta Internationala de Drept, Studii Europenesi Relatii Internationale* 137-147 (2018).

human being based on the role they have in the society. According to Cicero, the way people's sanction is based on the individual dignity, as everyone possess reason and is superior and different from the animals.¹⁰ Due to his capacity to reason, human is considered as God. According to Renaissance Giovanni Pico della Mirandola, dignity qualifies every individual to take up what they wanted to become.¹¹ As per social thinker Karl Marx *dignity is what raises man most, what confers supreme nobility to his activity and to all his aspirations.*¹² Amongst all the definition surrounding 'dignity', Kant's definition stands out to be most practical and still serves as a basis for relating dignity with individual being. According to him, "every man should be respected as a purpose in himself and to use him as a means to achieve any goals that are external to him is a crime against his dignity which pertains to him in his capacity of human being."¹³

This definition has quite broad interpretation. It means and include that every individual should be respected for what he is, and no one should be used as a means. Kant articulated this notion through devising a concept of 'categorical imperative', meaning that everybody's intrinsic 'human dignity' should be valued and protected without any exception.¹⁴ Treating someone as a means is regarded as an immoral act. It includes those of commodifying and of objectifying a person using the capability of the other who is being used. Commodifying a person can involve using him/her as a mere thing, instead of treating him/her, as a human being of higher status, as one should do.¹⁵ This particular definition of dignity could be appropriately related to that of the labour groups, whose capability/labour is commodified having no human value. These occur particularly more in unorganised sector and well associated with domestic work industry, where domestic labour is commodified with minimum material value and with no human value. Lack of recognition of dignity of domestic workers revolves around the domestic work industry. The reluctance of the

¹⁰ Cicero, 2 *M.T. De Inventione: De Optimo Genere Oratorum: Topica*, 323 Harvard University Press (1949), quoted in A. Barak, 17.

¹¹ Pico della Mirandola "Oratio de Dignitate Hominis". Rationamente Sau 900 de teze. Despredemnitataomului (Arguments or 900 Theses. On Human Dignity), (Bucharest: Stiintific5 siEnciclopedic5 Publishing House, (1991)).

¹² Predescu N.-R, *Human Dignity A Right or a Principle of Human Rights?* (Romanian Law, Tradition And European Vocation, 6th edn. 2018) (Proceedings of The International Conference Of Law, European Studies And International Relations).

¹³ *Ibid.*

¹⁴ A. C. Steinmann, "The Core Meaning of Human Dignity", 19 *Potchefstroom Electronic Law Journal* 1 (2016).

¹⁵ Treating Persons as Means, Stanford Encyclopaedia of Philosophy, April 13, 2019, *available at*: <https://plato.stanford.edu/entries/persons-means/> (last visited on April 23, 2022).

employer towards providing hygienic and favourable working conditions, adequate wages, equal treatment to the domestic workers establishes a clear case of human dignity violation.

According to Jeremy Waldron ‘dignity’ is a concept linked with status. It appertains to the standing of a person in a society and in his/her interaction with others. As per his words:¹⁶

Dignity is the status of a person predicated on the fact that she is recognized as having the ability to control and regulate her actions in accordance with her own apprehension of norms and reasons that apply to her; it assumes she is capable of giving and entitled to give an account of herself (and of the way in which she is regulating her actions and organizing her life), an account that others are to pay attention to; and it means finally that she has the wherewithal to demand that her agency and her presence among us as human being be taken seriously and accommodated in the lives of others, in others' attitudes and actions towards her, and in social life generally.

The Indian Supreme Court has widely interpreted the term dignity and recognised it as a fundamental right under article 21 of the constitution. In various cases court has recognised that ‘right to education’, ‘right to food’, ‘right to shelter’, ‘right against exploitation’, ‘protection of workers’ strength’, ‘right to work and public assistance’ all form part of dignified life.

III. Position of Domestic Workers in India and South Africa

The domestic workers in both South Africa and India form a large chunk and contribute to the country’s economy respectively. The factors that influence the domestic work industry in India and South Africa are much in common. Hence, the positions of the domestic workers in both the countries are discussed under the following heads:

▪ India

In India, there is ambiguity as to the number of domestic workers. According to Self-Employed Workers Association (SEWA), around 4.75 million to 90 million people are involved in domestic

¹⁶ Jeremy Waldron, How Law Protects Dignity, 71 (1) *The Cambridge Law Journal* 208 (2012).

work sector.¹⁷ Based on the latest NSSO report, recently released by government in January 2019, it is estimated that the total number of domestic workers is ranging around at 3.9 million.¹⁸ Predominantly, domestic labour workforce is highly feminised and India is no exception to it. 80 percent of the domestic workers in India are female.

In India the domestic work industry is an informal unregulated sector. The work of the domestic worker is seldom seen as the real work rather taken as a casual help. Being an unregulated sector, they are often asked to work for long stretches, beyond the contracted limits sometimes, but without adequate wages. This domestic work remains as such a sector where the employees have no scope of hike in wages, continues the job in spite of immense harassment and faces extreme discrimination based on class or caste or gender.

One ILO report of 2015¹⁹ gives an account on the working condition of the domestic workers in India. The report exposed that the domestic workers in India are subject to large scale exploitation in the hand of the employers. The force of domestic workers is mainly represented by the women and child who face deep poverty impact. The mistreatment frequently circles around the intricate mesh of players and situations including deceitful labour agents or the middle men and employers, the practice of lending money in advance or as loans, deduction of wages and the lack of labour law protection. Such working arrangements often force the workers to continue their work in the employer's place until their advances or dues are set off by it. Certainly, the domestic workers have no freedom at their workplace.

Moreover, there is no proper care of basic health and hygiene and proper sanitation amenities. Even after these hurdles they hardly secure any minimum wage prescribed by the Minimum Wages Act, 1948. Neither they are paid the minimum wages nor the Minimum Wages Act is specifically

¹⁷ Self-Employed Women's Association ('SEWA), Domestic Workers' Laws and Legal Issues in India, *available at*: <http://www.wiego.org/sites/default/files/resources/files/Domestic-Workers-Laws-and-Legal-Issues-India.pdf> (last visited on February 1, 2023).

¹⁸ Press Information Bureau, Government of India, Ministry of Labour & Employment, National Policy on Domestic Workers (Jan 7, 2019), *available at*: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1558848> (last visited on February 1, 2023).

¹⁹ Report on "Indispensable yet unprotected: Working Conditions of Indian Domestic Workers at Home and Abroad" *International Labour Organization*, (2015).

applicable to them. According to a report²⁰ domestic workers in Delhi monthly earn Rs. 1875 on an average. Therefore, some practices unquestionably result to ‘forced labour’ as defined by The ILO Forced Labour Convention 1930.

Latent gender discrimination, lack of bargaining power and illiteracy have made these Domestic working women vulnerable to abuse and violence at the hands on their employers. They face a huge number of serious problems at their work such as, low wages, long working shift with no breaks, no guarantee of weekly day off, absence of job security and so on.

Remarkably, in the COVID-19 Pandemic they are facing huge economic hardship and there is a question of their survival. As per a study conducted by Parichiti on Women Domestic Workers in Kolkata it was found that the employers of the domestic workers stopped paying them after the month of March, 2020 and asked them not to come for work until further communication. Even few among them stated that they could not obtain the benefits of the Public Distribution System for not complying with the formalities.²¹

The domestic workers of India remain out of the purview of major labour laws of the country like the Minimum Wages Act, 1948; the Employees Compensation Act, 1923; the Employees State Insurance Act, 1948; the Employees Provident Fund and Miscellaneous Provisions Act, 1952; the Maternity Benefit Act, 1961 and so on.

Again, caste stands as dominating factor for discrimination in the Indian society. The domestic work industry is regarded as example to uphold a complete system of class subservience.²² According to a study conducted by Raghuram on ‘Caste and Gender in the Organization of Paid Domestic Work’ it was found that one who is Brahmin would get the job of cook while the other who is Balmiki (formerly referred as ‘untouchables’) would have to work as a sweeper.²³

²⁰ Institute of Social Studies Trust, “Key findings from survey of live-out domestic workers in NCT of Delhi” (2009).

²¹ Domestic Workers’ Access to Secure Livelihoods in West Bengal, Parichiti, The Centre for Internet & Society, available at: <https://cis-india.org/raw/parichiti-domestic-workers-access-to-secure-livelihoods-west-bengal> (last visited on May 01, 2023).

²² U. Mahanta and I. Gupta (eds.), *Recognition of the Rights of Domestic*, 4 (Springer Nature Singapore Pvt. Ltd., 2019).

²³ P. Raghuram, Caste and Gender in the Organization of Paid Domestic Work, 15 (3) *Work, Employment & Society*, 607 (2001).

Debatably it is argued in the study that, there is an intersection of caste orders with patriarchal gender role. That is why within the Balmikis, the men are ascribed with the work of cleaning streets, while females have to work in the households of the individuals.²⁴ Lack of governing mechanisms and inadequate legal provision make the domestic working women susceptible to absurd employment terms and conditions and abuse.

▪ **South Africa**

In South Africa, the domestic workforce accounts for about 6.5 percent of the total workforce therein.²⁵ The country of South Africa has a remarkable timeline demarcation named as apartheid era and post-apartheid era. In the apartheid era, the working condition of the domestic workers in the country was highly exploitive in nature. They lived a humiliated, repressed and hegemonized life. In apartheid South Africa, black women were compelled to work for the whites. This was for the ruthless limitations imposed on the roles of the blacks for being mere subordinates and can perform jobs only of that category. The black South African women neither have had any hope nor had option or scope other than to work as domestic workers.²⁶ They were poorly paid, even minimum wages were not paid and were asked to live in low-graded ‘servants quarters’. They were treated as slaves rather than servant or worker. According to the words of Jacklyn Cock, “The maids in South Africa are indeed as a rule powerless and extremely vulnerable to manipulation and abuse”.²⁷

During the latter half of the 1940s, with the strengthening Apartheid society, the domestic working force were hugely oppressed and drawn into an exploitative market. Then the Master and Servants Act provided more protection for the ‘masters’ than the poor browbeaten servants.²⁸ The deprived servants had no say in their working sector, neither they had any right nor recourse to any redressal. Hence, this made them subjugated to the will and whims of their employer.

²⁴ *Ibid.*

²⁵ Statistics South Africa, Quarterly Labour Force Survey: 2nd Quarter, 2016 (Pretoria: Statistical release P0211, 2016)

²⁶ Sue Gordon, *Domestic workers: A handbook for Housewives* (South African Institute of Race Relations; 3rd edn., 1974).

²⁷ Jacklyn Cock, *Maids & Madams: A Study in the Politics of Exploitation* (Ravan Press, Johannesburg, 1980).

²⁸ Masters and Servants Law Amendment Act, 1873 (Act 18 of 1873).

However, with all new hopes the country in the post-apartheid era came up with a vigorous infrastructure and framework to govern the workforce. This framework is in line with the constitutional commitment of transformation and promises dignity by supporting decent work for domestic workers. In the post-apartheid era, the state of South Africa has hurred one of the most effective mechanisms backed by legal protection²⁹ to safeguard the domestic workers. It paved the way for the political and democratic participation of the domestic workers, giving them the right to form trade unions.³⁰ Though, the first domestic union, named, the ‘South African Domestic Workers Union (SADWU)’, was established in the year of 1984 which undertook the initiative to advance the living and working standards of the domestic workers.³¹ But it was only after 1994 when the democratic government was formed after the apartheid era, the significant legislations with suitable amendment like were enacted, like, the Basic Conditions of Employment Act (BCEA) and the Labour Relation Act (LRA) to include domestic workers under their arena of protection. The BCEA provides for regulation of employment conditions including the working hours,³² wages, overtime wages,³³ rest hours,³⁴ holidays,³⁵ leave³⁶ and termination of employment.³⁷

Again, the LRA gives effect to the constitutional rights of the labours.³⁸ It encourages the formation of trade unions and to participate in the legal activities carried on by the unions. It gives prominence to fair labour practices and hence prohibits hiring discrimination or compelling cessation on being the trade union member. But the advantages of unionisation among the domestic workers is hardly explored.

²⁹ The Labour Relations Act, 1995 (Act 66 of 1995).

³⁰ Shireen Ally, Domestic Worker Unionisation in Post-Apartheid South Africa: Demobilisation and Depoliticisation by the Democratic State, 35(1) *Politikon South African Journal of Political Studies* 3 (2008).

³¹ South African Domestic Service and Allied Workers Union (SADSAWU), SADSAWU, *available at*: <http://www.sadsawu.com/about-us.html> (last visited on November 22, 2022).

³² The Basic Conditions of Employment Act, 1997, s. 9(1) provides for limitation of 45 hours of work per week.

³³ *Id.*, s.10 (2) provides that an employer must pay an employee at least one and one-half times the employee’s wage for overtime worked.

³⁴ *Id.*, s. 15 (1) provides that twelve-hour daily rest period and a thirty-six-hour weekly rest period.

³⁵ *Id.*, s. 18

³⁶ *Id.*, chapter 3.

³⁷ *Id.*, chapter 5.

³⁸ The South African Constitution, s.23.

In 1998, dejectedly, this SADWU had to wind up owing to economic limitations. However, the flame of hope again arose when in 2000 the South African Domestic Service and Allied Workers Union (SADSAWU) was established. It initiated for the inclusion of domestic workers under the protection of the major labour laws and mobilise the fight to safeguard their rights. The minimum wage coverage was extended to domestic workforce by the government in 2002 after consultation between tripartite experts and SADSAWU. The minimum wage of the domestic workers varies on sectoral basis. In urban areas the minimum wage is higher than the minimum wages in rural depending on the living cost.³⁹ It must be noted that domestic workers are some of the least paid workers in the total workforce in South Africa.

Though the law is considering ‘domestic work’ as a work and worker engaged in domestic work industry as workers, but the private households where the domestic workers are working are not considered as the establishments. Hence for this reason the domestic workers cannot claim compensation benefits under the ‘Compensation for Occupational Injuries and Diseases Act (COIDA)’.⁴⁰

After contributing significantly to the development of new international labour standards on domestic work, South Africa is one of the 22 ILO members that have ratified the ILO Decent Work for Domestic Workers Convention, 2011.

With regard to the minimum wages, according to a study taken up by Social Law Project (SLP), University of Western Cape, in 2009, an average of 138 out of the sample of 600 domestic workers (DWs), that is 23 percent of them received more than the minimum wage.⁴¹ Whereas, only 11 percent were getting the minimum wage. Among the unionised workers, 65.3 percent knew the fact that there existed certain laws which are applicable particularly to the DWs. While in case of non-unionised workers, only 19 percent of them were aware about such laws.⁴² This exemplified the importance of unions in empowering, advancing and educating DWs.

³⁹ The Labour Relation Act, 1995 (Act 66 of 1995), ss. 7, 13.

⁴⁰ Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993).

⁴¹ Domestic Worker issues: Department of Labour, union and civil society briefings, Parliamentary Monitoring Group, August 23, 2010, available at: <https://pmg.org.za/committee-meeting/11890/> (last visited on January 02, 2022).

⁴² *Ibid.*

The study further pointed out that among the 200 employers from Cape Town, Durban and Johannesburg, less than 100 of them had registered their DWs for Unemployment Insurance Fund (UIF) in South Africa, which is available to the latter. However, 56.2 percent of those employers were knowing that they were obliged to do the same. After the announcement of Sectoral Determination 7 (SD7), DWs were entitled to rights and assistances, specific minimum wage and working hours, including UIF, compulsory rest day as well as benefits of employment termination rules.

The SLP undertook research namely, ‘Domestic Workers Research Project’ (DWRP). The aim of the project was to check the effectiveness of the SD7 regulating the domestic work industry.⁴³ The challenges that posed as obstacles in realisation of full rights by the DWs were, lack of awareness among the DWs regarding SD7, the limited powers of authorities, exclusion of DWs from COIDA, the absence of negotiating forum for the DWs⁴⁴ and section 65(2) of the Basic Conditions of Employment Act (BCEA) which provides for restricted power of the labour inspector to enter private homes.⁴⁵

IV. Right to Live with Dignity: A Core Human Right and Constitutional Principle

Human dignity or right to live with dignity is a principle as well as a fundamental human right being recognised under several international conventions, treaties and national constitutions. All human rights are considered to be grounded on the concept of human dignity. The Charter of United Nations provides for the reaffirming, “*faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.*”⁴⁶

The major document on human right that is the Universal Declaration of Human Rights, 1948 has been adopted almost by every country across the globe. It affirms the recognition of dignity as the intrinsic right of every individual,⁴⁷ which forms the basis for other principles of human rights like of freedom, justice and peace.⁴⁸ Besides, the Preambles of the International Covenant on

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Basic Conditions of Employment Act, 1997 (Act 75 of 1997).

⁴⁶ The United Nations Charter, Preamble.

⁴⁷ The Universal Declaration of Human Rights, Art. 1.

⁴⁸ *Id.*, Preamble.

Economic, Social and Cultural Rights, 1966 and the International Covenant on Civil and Political Rights, 1966 asserts that human rights are derived from the “inherent dignity of the human person.”

▪ **Constitutional Position in South Africa**

Human dignity is regarded as one the core underlying principles of the South African Constitution. Section 10 of the South African Constitution provides that, “*Everyone has inherent dignity and the right to have their dignity respected and protected.*” This particular right to live with human dignity acts as a major tool to overcome the exclusive nature of apartheid society. In the case of *Dawood v. Minister of Home Affairs*⁴⁹ the court held that:⁵⁰

The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it too to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings. Human dignity therefore informs constitutional adjudication and interpretation at a range of levels...This Court has already acknowledged the importance of the constitutional value of dignity in interpreting rights such as the right to equality, the right not to be punished in a cruel, inhuman or degrading way, and the right to life. Human dignity is also a constitutional value that is of central significance in the limitation’s analysis. Section 10, however, makes it plain that dignity is not only a value fundamental to our Constitution, it is a justiciable and enforceable right that must be respected and protected. In many cases, however, where the value of human dignity is offended, the primary constitutional breach occasioned may be of a more specific right such as the right to bodily integrity, the right to equality or the right not to be subjected to slavery, servitude or forced labour.

The Constitutional Court of South Africa in *Du Toit v. Minister for Welfare and Population Development*,⁵¹ equated dignity with self-esteem and held that insulting or offending someone would result into impairment of the right to dignified life, a constitutional breach.

⁴⁹ *Dawood v. Minister of Home Affairs* (CCT35/99) [2000] ZACC 8.

⁵⁰ *Dawood v. Minister of Home Affairs*, 2000 (3) SA 936 (CC), para 35.

⁵¹ *Du Toit v. Minister for Welfare and Population Development*, 2002 (10) BCLR 1006 (CC).

▪ **Constitutional Position in India**

Indian Constitution doesn't have any explicit provision for the protection of 'domestic workers'. In an implied sense, it contains some provisions. Overall, the protection for labourers is injected by the constitution framers in various articles. These articles are 14,16,19(1)(c),21,23,24,32 that contains the Fundamental Rights of the people of India and article 38,39,39A,41,42,43,43-A,46,47 as Directive Principles of State Policy where State⁵² is obliged to protect them. With the judicial development, many grounds have been added under article 21 of the Constitution for securing the life and liberty of every person.

In *Olga Tellis v. Bombay Municipal Corporation*,⁵³ the spectrum of article 21 had been widened up by the court. It also held that right to livelihood with human dignity is the crux in formation of the nucleus of right to life under article 21. The pavement dwellers whose shelter had been taken away by the corporation, also had right to livelihood with dignity. Human dignity basically forms the part of fundamental right. Partially or in implied sense, right to live with human dignity in itself is a fundamental right.

Supreme Court in the case of *Francis Coralie Mullin v. Union Territory of Delhi*⁵⁴ has held the right to access to basic necessities as an inseparable part of right to live with "human dignity" under article 21 of the constitution. Being a vulnerable section, the domestic workers' basic necessities are always being neglected in the society. Increasingly, there is hardly any statute existing to protect their rights. The humanity towards safeguarding dignity of the workers has been shown in *Safai Karamchari Andolan v. Union of India*,⁵⁵ when the apex court issued directions to abolish Manual Scavenging as it violates the right to live with human dignity. The right to food in *Peoples Union for Civil Liberties (PUCL) v. Union of India*,⁵⁶ right to education in *Mohini Jain v. State of Karnataka*,⁵⁷ right to shelter in *Chameli Singh v. State of U.P.*,⁵⁸ right against exploitation in *Bandhua Mukti Morcha v. Union of India*⁵⁹ and right to health in *Consumer Education Research*

⁵² The Constitution of India, 1950, art. 12.

⁵³ *Olga Tellis v. Bombay Municipal Corporation*, 1985 SCC (3) 545.

⁵⁴ *Francis Coralie Mullin v. Union Territory of Delhi* (1981) 1 SCC 608.

⁵⁵ *Safai Karamchari Andolan v. Union of India*, 2014 (4) SCALE 165.

⁵⁶ *Peoples Union for Civil Liberties (PUCL) v. Union of India*, WP (Civil) No 196/2001, July 23, 2001, unreported.

⁵⁷ *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858.

⁵⁸ *Chameli Singh v. State of U.P.* (1996) 2 SCC 549.

⁵⁹ *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161.

*Centre v. Union of India*⁶⁰ have been declared as essential part of right to live with human dignity under article 21. Each one of these rights is necessary for the continuous existence of a human being.

V. Recognition of the Human Dignity of the Domestic Workers: Position in South Africa and India

5.1. Position of Domestic Working Women in South Africa

The constitution of South Africa is “transformative”. It sought to constitute:⁶¹

a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful coexistence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

In South Africa, the recent jurisprudential developments in the matter concerning the human dignity of domestic workers have justified the Zulu phrase, “*ubuntu ngumuntu ngabantu*”⁶² aptly. It literally means ‘*A person is a person through other people*’. ‘*Ubuntu*’ means humanity i.e., the nature of a human being towards others in the society. This concept has been injected in the African Constitution as a constitutional right including even the domestic workers. The Constitution of South Africa itself has become an antidote of the apartheid society that was prevalent there in the post-colonial era. Domestic workers are the unsung heroines in the country and globally.⁶³ But the issue of social insecurity of this exploited people was still there though the apartheid society ended in 1993.

⁶⁰ *Consumer Education & Research Centre v. Union of India*, AIR 1995 SC 922.

⁶¹ V. Mantouvalou and N. Sedacca, The Human Rights of Domestic Workers: ‘Mahlangu v Ministry of Justice and The Transformative Nature of the South African Constitution,’ UK Labor Law Blog (December 11, 2020), *available at*: <https://uklabourlawblog.com/2020/12/11/the-human-rights-of-domestic-workers-mahlangu-v-ministry-of-labour-and-the-transformative-nature-of-the-south-african-constitution-by-virginia-mantouvalou-and-natalie-sedacca/> (last visited on January 21, 2022).

⁶² Nkem Ifejika, “What does ubuntu really mean?” (September 29, 2006), *available at*: <https://www.theguardian.com/theguardian/2006/sep/29/features11.g2> (last visited February 27, 2022).

⁶³ *Supra* note 61.

5.1.1. Judicial Developments

The Constitutional Court of South Africa defined the position of domestic workers as a pillar forming the social structure in the recent case of *Mahlangu v. Minister of Labor*.⁶⁴ The judgment in this case was given retrospective effect from April 27, 1994 for ensuring social justice. In this case, the court had declared the section 1 (xix)(v) of the Compensation for Occupational Injuries and Diseases Act (COIDA), 1993 as unconstitutional based on section 1 of South African Constitution which provides that: the Republic of South Africa is a democratic, sovereign country consisting of the key principles like ‘*human dignity*’, ‘*equality*’, ‘*advancement of human rights*’, ‘*non-racialism*’, ‘*freedom*’ and ‘*non sexism*’.⁶⁵

In this present case, this section of COIDA was challenged as it had excluded the private domestic workers from the definition of ‘*employee*’ and thereby excluded them from receiving any benefits of social security i.e., the key factor of establishing human dignity. Ms. Mahlangu was working in a household for 22 years in Pretoria. While she was cleaning the pool of the employer on March 31, 2012 she drowned there and lost her life. The employer though being in the home at that time, found her body floating in the pool much later. He took the defence that there was no sound of struggle in the water, that’s why it was not possible for anyone to know about this. As Ms. Mahlangu was the only working person and her daughter was dependent on her, she filed the case by alleging that her mother was partially blind and did not know swimming. After failing in the lower courts, she went to High Court of South Africa, Gauteng Division, Pretoria and it declared the provision of COIDA as unconstitutional, but it lacked certain reasoning. Hence the matter was forwarded to the Constitutional Court under section 167(5) of Constitution of South Africa. The apex court gave its final decision with proper reasons.

With specific reference to the provisions of international conventions, Constitution of Republic of South Africa and other acts, the court emphasized the provision of social security to the private domestic workers. The court while deciding the case referred to article 22 and 25 of Universal Declaration of Human Rights (UDHR) which provides for establishment of ‘*social security*’ as a natural inherent right of every human in society and ensuring the same in cases of sickness,

⁶⁴ *Mahlangu v. Minister of Labor* (2020) ZACC 24.

⁶⁵ The Constitution of the Republic of South Africa, s.1(a) and (b).

unemployment, old age etc. respectively;⁶⁶ International Covenant on Economic, Social, Cultural Rights (ICESCR) that makes the states obliged to recognize everyone's right to social security in the form of 'social insurance';⁶⁷ Maputo Protocol containing which obliges the state to guarantee equal opportunities in work and career for advancement;⁶⁸ Charter of Fundamental Social Rights in Southern African Development Community that focuses on the member states' duty to create enabling environment where every worker will be having the right to adequate societal protection and benefits;⁶⁹ United Nations Sustainable Development Goals (SDG 8) providing the protection of labour rights including safe and secure working;⁷⁰ section 39(1)(b) of Constitution of South Africa makes the court bound to follow the international laws for interpretation of rights mentioned in Bill of Rights;⁷¹ article 2 and 11(f) of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁷² which ensure specific measures to protect women against any kind of discrimination; article 3 of Domestic Workers Convention which recognized the vulnerability of the class of domestic women workers and state's duty to protect them;⁷³ section 27(1)(c) and 27(2) of Constitution of South Africa that explains the scope and extent of social security.⁷⁴

Relying on *Government RSA v. Grootboom*⁷⁵ and *Khosa v. Minister Social Security*,⁷⁶ the court further found that excluding domestic workers from COIDA unreasonably violated their rights to have access to social security as there existed no justifiable reason for excluding them or their dependents (as a vulnerable socio-economic group) from accessing social security benefits in times of need.⁷⁷ As COIDA is a social security legislation, its objective is to achieve substantive

⁶⁶ The Universal Declaration of Human Rights, 1948, arts. 22, 25.

⁶⁷ The International Covenant on Economic, Social, Cultural Rights, 1966. art. 9.

⁶⁸ The Maputo Protocol, 2003, art. 13.

⁶⁹ The Charter of Fundamental Social Rights, 2003, art. 10.

⁷⁰ The Sustainable Development Goal, 2015, Goal 8.

⁷¹ The Constitution of South Africa, 1996, s. 39 (1) (b).

⁷² The Convention on the Elimination of All Forms of Discrimination Against Women, 1979, arts. 2, 11.

⁷³ The Domestic Workers Convention, 2011, art. 3.

⁷⁴ The Constitution of South Africa, 1996, ss. 27(1)(c) & 27(2).

⁷⁵ *Government of the Republic of South Africa v. Grootboom* (CCT11/00) [2000] ZACC 19.

⁷⁶ *Khosa v. Minister of Social Development and Mahlaule v. Minister of Social Development* (CCT 13/03, CCT 12/03) & [2004] ZACC 11.

⁷⁷ Geoffrey Allsop, "South African Constitutional Court declares exclusion of Domestic Workers from occupational injury legislation to be unconstitutional", (December 9, 2020), available at: <https://ohrh.law.ox.ac.uk/south-african-constitutional-court-declares-exclusion-of-domestic-workers-from-occupational-injury-legislation-to-be-unconstitutional/> (last visited on March 01, 2022).

equality.⁷⁸ So, this act has to be read in accordance of the transformative spirit of Constitution of South Africa which seeks to heal the wound of the contemporary effects of past apartheid society and colonialism.

The Court to ensure ‘*substantive equality*’ in this present case also used the Harksen test laid down in the case of *Harksen v. Lane N.O.*⁷⁹ The court declared the discriminatory provision of COIDA as totally invalid from the very first instance. To make the grounds more vivid, court signified, “*the need to make a decisive break from the ills of past*”⁸⁰ which was also held in the case of *South African Revenue Service v. Commission for Conciliation, Mediation and Arbitration*.⁸¹ Increasingly, the court has recognized the duty of state to protect the dignity and social security of the migrant labourers in the case of *Discovery Health Limited v. Commission for Conciliation, Mediation, Arbitration*⁸² and had indicated the vulnerability of this section.

5.1.2. Legislative Developments

The South African Constitution has created a milestone in recognizing the rights of domestic women workers. Section 23 of Constitution says, “*everyone has the right to fair labour practices*”, which makes all employers bound to register their domestic workers with the Unemployment Insurance Fund (UIF).⁸³ UIF is applicable to all workers including domestic workers since April 1, 2003.⁸⁴ South Africa has created a milestone regarding minimum wage for domestic workers i.e. Employment and Labour Minister, Mr. Thulas Nxesi’s publication of national minimum wages in Government Gazette 44136.⁸⁵ It was declared that the minimum wage for domestic workers in South Africa was R19.09 per hour.⁸⁶ Besides, the National Minimum Wage Act, 2018 grants

⁷⁸ *Mahlangu v. Minister of Labor* (2020) ZACC 24, para. 53.

⁷⁹ *Harksen v. Lane N.O.* [1997] ZACC 12.

⁸⁰ *Supra* note 78, para. 97.

⁸¹ *South African Revenue Service v. Commission for Conciliation, Mediation and Arbitration* [2016] ZACC 38.

⁸² *Discovery Health Limited v. Commission for Conciliation, Mediation, Arbitration* [2008] 7 BLLR 633(LC).

⁸³ Bbplaw admin, “What are the Rights of Domestic Workers in South Africa in 2021?”, *Bbplaw Attorneys*, (April 08, 2021), available at: <https://www.bbplaw.attorney/domestic-workers-rights/> (last visited on February 09, 2023).

⁸⁴ Solidarity Centre, USAID funded Global Labour Program, “Report of Domestic Workers and Socio-Economic Rights: A South African Case Study”, 11 (2013), a product of the research series titled- ‘The Transformation Of Work: Challenges And Strategies’.

⁸⁵ National Minimum Wage Act: Annual Review and Adjustment of the National Minimum Wage for 2021, Government Gazette No. 44136 on National Minimum Wage Act No. 9 of 2018, South African Government, available at: <https://www.gov.za/documents/national-minimum-wage-act-annual-review-and-adjustment-national-minimum-wage-2-21-8-feb#> (last visited on March 03, 2022).

⁸⁶ *Ibid.*

minimum wage for the domestic workers to improve their economic conditions and to provide social justice.⁸⁷

The Employment Equity Act, 1998 and its amendment in 2013 protects the dignity of domestic workers and prohibits any kind of ‘unfair discrimination’ against them as the Constitution of South Africa also has an aim of substantive equality. Domestic Violence Act, 1998 also contains the measures of protection of the dignity of live-in domestic workers against any kind of “emotional, verbal, psychological abuse” done by the employer.⁸⁸ The Constitution of South Africa under section 26 guarantees the right to “adequate housing” to everyone⁸⁹ which includes the domestic working women as well. Labour Relations Act, 1995 and Social Assistance Act, 2004 are also dedicated solely for the protection of human dignity of domestic women workers. Thereafter, the legislature of this country took a huge step in 2003 by including domestic workers under the purview of Unemployment Insurance Act, 2001 which also provides maternity and illness benefits. The other legislations for this purpose are the Occupational Health and safety Act, 1993, the Immigration Act etc.

5.2. Position of Domestic Working Women in India

India if compared with South Africa is still lagging behind with respect to the initiatives taken for recognizing the rights and dignity of domestic workers.

5.2.1. Judicial Developments

India has not witnessed any such concrete judicial pronouncement where the dignity of the lives of domestic workers has been recognized. The preamble of the Constitution of India has the deep sentiments of Justice, Equality, Liberty, and Fraternity. Access to equal justice is itself a fundamental right enshrined in article 21 read with article 39A of the Constitution. Hence, the fight for the recognition of the dignity of these people is the fight for their fundamental right. The urge for enacting a law to protect dignity of the domestic workers was first seen in the case of *National*

⁸⁷ National Minimum Wage Act, 2018, s. 2 and 3.

⁸⁸ WIEGO Law and Informality Resources, “Report of Domestic Workers’ Laws and Legal Issues in South Africa”, 13 (2014).

⁸⁹ South African Human Rights Commission, “The Right to Adequate Housing Factsheet”, available at: <https://www.sahrc.org.za/home/21/files/Fact%20Sheet%20on%20the%20right%20to%20adequate%20housing.pdf> (last visited on March 16, 2023).

Domestic Workers Welfare Trust v. Union of India.⁹⁰ In this case, National Domestic Workers Welfare Trust addressed various problems and put forward certain demands in their petition with regards to domestic workers. The Central Government had replied and put their contention that this Unorganized Sector Workers Bill, 2004 was going to be the solution to the petition and to cure the vulnerability of domestic workers. This was also a vague argument with no proper execution of legislations. The Supreme Court of India in large number of cases has actively taken measures to protect the rights of labourers. In *Olga Tellis v. Bombay Municipal Corporation*,⁹¹ the apex court recognized the right to livelihood and right to work as a fundamental right under article 21.

This case can be traced back as a landmark with direct link between dignified life and fundamental right. The apex court has even pointed out that there would be no wrong in equating the sufferings of domestic workers with bonded labourers and this was held in *P. Sivaswamy v. State of Andhra Pradesh*⁹² case.⁹³ In *Shramjeevi Mahila Samiti v. State of NCT of Delhi*⁹⁴ case, a reference was drawn from the Unorganized Workers Social Security Act, 2008 regarding formation of National Social Security Board. Unfortunately, there was a gap of almost nine years till 2017, after which the implementation of such provision and formation of this board actually came into limelight. Hence for these nine years, there was nothing but a frozen provision of law. This kind of reluctance in implementing the law is also a reason of such pathetic situation of these domestic workers. These judicial decisions further enlarged the urgent need for a concrete law signifying 'Human Dignity' and providing 'Social Justice' to domestic workers.

5.2.2. Legislative Developments

Till date, there is no specific legislation for the purpose of welfare of domestic workers in India. The Constitution of India is giving protection and ensuring right to human dignity in implied terms under article 21⁹⁵. In addition, the Unorganized workers' Social Security Act, 2008 has extended

⁹⁰ Shradhha Gome, 'Decent work for domestic workers: Reflections in the Indian legal context', Manupatra, available at: https://docs.manupatra.in/newsline/articles/Upload/5E9BEEB-68E7-4200-AF9D-5B200680438B.1-E_service.pdf(last visited on March 22, 2023).

⁹¹ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 18.

⁹² *P. Sivaswamy v. State of Andhra Pradesh* (1988) 4 SCC 466.

⁹³ *Supra* note 90.

⁹⁴ *Shramajeevi Mahila Samiti v. State of NCT of Delhi* (2018) SCC Online 3680 (SC).

⁹⁵ *Francis Coralie Mullin v. UT of Delhi* (1981) 1 SCC 608; AIR 1981 SC 746; *Samatha v. State of A.P.*, AIR 1997 SC 3297.

some protection to their dignity and lives. However, the Act has been ineffective and ambiguous as their rights are not recognized specifically therein. The profession of ‘domestic workers or servants’ was incorporated in 2006 within the ambit of ‘prohibited employment’ as Entry no. 14 in Part A of the Schedule of the Child and Adolescent Labour (Protection and Regulation) Act, 1986.⁹⁶ Now, after amendment of the Act in 2016, the present position is that, no child shall be employed in any occupation.⁹⁷

After the *Vishakha v. State of Rajasthan case*,⁹⁸ the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013 had tried to address the concern of domestic working women to some extent. Besides, the central government had taken multiple initiatives by providing *Rashtriya Swasthya Bima Yojana* to BPLs and setting a task force for domestic workers with an aim to deliberate on the matter of their decent working environment.⁹⁹ However, this was not enough for the welfare of this particular section of society in India.

Today almost 43 labour legislations are there. In spite of the huge number of laws being present in India for organized sector, majority of the people are from unorganized sector. The laws for organized sector are Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Workmen’s Compensation Act, 1923, Inter State Migrant Workers Act, 1979, Payment of Wages Act, 1936, Equal Remuneration Act, 1976, Employee’s State Insurance Act etc., but these age-old laws are not covering the objective of social welfare for the domestic working women in India.

For this, there is a need of special sectoral law for domestic workers like other existing sectoral laws such as the Dock Workers (Regulation of Employment) Act, 1948, Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and Building and Other Construction Workers (RE&CS) Act, 1996, etc. National Platform for Domestic Workers (NPDW) was founded in 2012

⁹⁶ Hugh D. Hindman (ed.), *The World of Child Labor: An Historical And Regional Survey*, 786 (Myron E. Sharpe, 2009).

⁹⁷ The Child and Adolescent Labour (Protection and Regulation) Act, 1986 (Act 61 of 1986), s. 3.

⁹⁸ *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.

⁹⁹ *Supra* note 90.

and has created various domestic workers organizations which demand for comprehensive legislation for domestic workers.¹⁰⁰

Recently, the Parliament has drafted four codes and consolidated forty-four labour legislations¹⁰¹ as per the recommendations of Second National Commission on Labour, 2002 for Central labour laws¹⁰² which have already received the recognition and assent of Parliament as well as President. The plan of the concerned central government was to implement the codes from the financial year 2021-2022 but the date has not been notified specifically. Now it is decided to make it effective from the financial year 2023. Among these four codes, section 2(78) of the Code on Social Security, 2020 has defined the term ‘Social Security’ as the measures for the protection afforded to employees, unorganized workers, gig workers and platform workers, to ensure them access to health care and to provide income security, particularly, in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner these are to be actualised through the schemes framed under this code.¹⁰³ Section 2(86) of this code has specifically mentioned home-based workers as one of the categories of the “*Unorganized Worker*”. Section 2(26) of this code includes unskilled workers as “employee”. Section 6(7)(c) states that social welfare schemes for unorganized workers, gig workers and platform workers are to be administered by Central government.

Accordingly, State Unorganized Workers’ Board will perform their functions certainly for the unorganized sector under section 6(15) of this code. In addition to this, the Code on Social Security empowers the Central government to make schemes for *unorganized workers*, gig workers and platform workers.¹⁰⁴ Increasingly, gratuity provident fund shall be payable to an employee.¹⁰⁵ The registration with Aadhar number needs to be done compulsorily to avail benefit of the schemes

¹⁰⁰ WIEGO Law and Informality Resources, “Report of Domestic Workers’ Laws and Legal Issues in India” (2014).

¹⁰¹ Priyadarshini Maji, ‘New Labour Codes: How will they impact social security, take-home salary’, *Financial Express* (March 26, 2021), available at: <https://www.financialexpress.com/money/new-labour-codes-how-will-they-impact-social-security-take-home-salary/2220976/> (last visited on April 03, 2022).

¹⁰² Ministry of Labor and Employment, Second National Commission, 39th session of Indian Labour Conference, “Report on Labor with emphasis on rationalization of labor laws and unorganized sector” (2003), available at: https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf (last visited on April 03, 2022).

¹⁰³ The Code on Social Security, 2020 (Act 36 of 2020), s. 2(78).

¹⁰⁴ *Id.*, at s. 45.

¹⁰⁵ *Id.*, at s. 53.

made by centre and state as mentioned in section 113 of this Social Security Code. Indeed, there is separate provision for the schemes of gig and platform workers under section 114(2).

But, unfortunately, there's no separate provision for domestic workers as the legislature has left this portion vague. Recently, there has been an urge for the withdrawal of these new labour codes from Chennai government when the members of the Unorganised Workers' Federation of Chennai have protested by saying that these social security provisions are not in compliance with the earlier legislations.¹⁰⁶ Hence, the motto of providing social safety and security has not been fulfilled by the Central government.

VI. Critical Evaluation

Human dignity is a multi-dimensional facet. From the analysis of the cases and legislations of both South Africa and India, it's vivid that the framers of Constitution framed their respective Constitutions with an aim to protect the dignified existence of human beings. The Universal Declaration of Human Rights (UDHR) being the universal document of human rights, clearly recognizes, “‘*the inherent dignity*’ and ‘*the equal and inalienable rights*’ of all members of human family as the integral elements forming freedom, justice and peace in the world.”¹⁰⁷ India is still lagging behind South Africa in terms of effectively protecting the dignity of domestic workers.

In India, there isn't any exact number of domestic workers present. Though the official data states that the number is somewhat nearest to 4.75 million (amongst them 3 million are women), the actual number is presumed in between 20 to 80 million.¹⁰⁸ However, the ray of hope emerged in 2021 when the Labour and Employment Minister Bhupendra Yadav launched the first ‘*All India Survey*’. The objective of the survey was to calculate the database of these people at both national and state level with their wages. The ministry assured that survey would be finished within the upcoming year.¹⁰⁹ Unfortunately, this pandemic has created hindrance in the pathway of such a

¹⁰⁶ Editorial, ‘State govt. urged to press for withdrawal of new Labour Laws (CHENNAI)’, *The Hindu* (April 21, 2022).

¹⁰⁷ The Universal Declaration of Human Rights (UDHR), Preamble.

¹⁰⁸ About Domestic Work, International Labor Organization, available at: https://www.ilo.org.newdelhi/areasofwork/WCMS_141187/lang--en/index.htm (last visited on April 22, 2023).

¹⁰⁹ Editorial, ‘First all-India survey on domestic workers kicks off’, *The Hindu* (November 22, 2021), available at: <https://www.thehindu.com/news/national/first-all-india-survey-on-domestic-workers-kicks-off/article37630354.ece> (last visited on April 22, 2023).

great initiative. The implementation of these new legislations on ‘Welfare of Labour’ i.e. a subject matter of Concurrent list,¹¹⁰ is getting delayed as seven states and the Centre have not framed the rules yet.¹¹¹ The implementation process is going to take more time. Whereas, South Africa’s latest Quarterly Labour Force Survey (QLFS) has recently indicated a huge increase in the number of domestic workers in South Africa from 745,000 in Q2 2020 to 892,000 workers in Q2 2021.¹¹²

There is no specific law to protect the domestic workers in India neither any provision has been made to give effect to the ratified conventions like Right to Organise, Freedom of Association, etc.¹¹³ Though they have been included in the new labour codes but the same give them protection in implied sense. In the Code of Wages, 2019, the definition of ‘employee’ tends to include ‘domestic workers’ as it contains the terms such as any person to do ‘semi-skilled or unskilled work’ irrespective of the terms of employment (explicit or implied).¹¹⁴ However, the definition of ‘worker’¹¹⁵ is a vague one as it says ‘worker employed in any industry’.

Hence the question arises whether ‘domestic private household’ comes under the purview of ‘industry’ and the answer is subjected to various interpretations.¹¹⁶ In section 2(zd)(ii)(c) of Occupational Safety, Health and Working Conditions Code, 2020 (OSHWC), ‘industry’ does not include ‘any domestic service’. The First Schedule under this code confirms this fact. Unlike the wage code, OSHWC code includes any person on wages employed by an ‘establishment’ to do any ‘skilled, semi-skilled, unskilled’ and other various works as ‘employee’.¹¹⁷ Unfortunately, the definition of ‘establishment’¹¹⁸ here does not include the private households. Overall, it would not

¹¹⁰ The Constitution of India, 1950, VIIth Schedule, Entry 24 of List-III.

¹¹¹ Indivjal Dhasmana, “Long-awaited four labour codes may not come up before June-end”, *Business Standard* (March 30, 2022), available at: https://www.business-standard.com/article/economy-policy/long-awaited-four-labour-codes-may-not-come-up-before-june-end-122033000045_1.html (last visited on March 23, 2023).

¹¹² Here’s how many domestic workers there are in South Africa- and the wage changes you should know about’, *Business Tech* (August 24, 2021), available at: <https://businesstech.co.za/news/finance/515584/heres-how-many-domestic-workers-there-are-in-south-africa-and-the-wage-changes-you-should-know-about/> (last visited on March 21, 2022).

¹¹³ Neymat Chadha, “Domestic Workers in India: An Invisible Workforce”, available at: [Domestic-Workers-in-India-An-Invisible-Workforce.pdf](#) (sprf.in)(last visited on April 12, 2022).

¹¹⁴ The Code on Wages, 2019 (Act 29 of 2019), s. 2(k).

¹¹⁵ *Id.*, at s. 2(z).

¹¹⁶ N. Neetha, Misconstrued Notions and Misplaced Interventions: An Assessment of State Policy on Domestic Work in India”, 64 (3) *Indian Journal Labour Economy*, 545 (2021).

¹¹⁷ The Occupational Safety, Health and Working Conditions Code, 2020, (Act 37 of 2020), s. 2(t).

¹¹⁸ *Id.* at s. 2(v).

be wrong to say that OSHWC code does not have any concrete recognition of domestic workers.¹¹⁹ Although the Code on Social Security, 2020 provides for their protection, but there is not any standard mechanism prescribed for calculating the maternity assistance.¹²⁰ In addition to this, the predominant caste system in India still exists. This caste-biased behaviours lead to severe exploitation of this unorganized sector. Overall, the domestic work industry has been excluded from the main stream society. On other hand, South African legislations effectively include domestic workers and give them protection. Section 10 of South African Constitution and article 21 of Constitution of India are granting everyone's fundamental right to have dignified life and it has reached an astonishing level of liberal interpretation and implementing the term 'human dignity' for every individual. Section 10 of African Constitution ensures the spirit of 'transformative constitutionalism' to transform the society¹²¹ into an equitable one with much wider scope. The Employment Equity Act, 1998 and its amendment in 2013, Labour Relations Act, 1995, Social Assistance Act, 2004, Unemployment Insurance Act, 2001, Occupational Health and Safety Act, 1993 and National Minimum Wage Act, 2018 expressly recognize for the protection of the dignity of domestic workers in South Africa.

There are various categories of domestic workers in India such as part-time worker, full-time worker, live-in worker, however there is no proper definition of this profession. In India, the domestic workers are separately known on the basis of 'place of work' rather than the dynamic 'set of works' done by them.¹²² These present definitions are nothing but a failure as it fails to analyse the variety of domestic works in Indian context.

From the judicial and legislative developments in South Africa, it's very much clear that South Africa is in better position than India in terms of recognizing dignity and providing protection to domestic workers. South Africa is the model country in recognizing their rights despite of being a sufferer during the apartheid era which ended in 1993. The reason might be that South Africa had seen the racial exploitation and victimization of people from their shoes. Hence, India should take

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ Md. Saif Ali Khan and Sharafat Ali, Transformative Constitutionalism: Contemporary Issues and Challenges in India, 3 (3) *International Journal of Law and Management & Humanities* 1413 (2020).

¹²² Neymat Chadha, "Domestic Workers in India: An Invisible Workforce", available at: Domestic-Workers-in-India-An-Invisible-Workforce.pdf (sprf.in) (last visited on April 12, 2022).

proper legislative and judicial inspiration for securing the rights and dignity of the ‘domestic workers’ living there.

In short, there’s lack of availability of minimum wages scheme in India but in South Africa the condition is far better than Indian scenario. In India, a huge unfortunate history of caste and class discrimination can easily be traced back which have a nexus with each other. Thus, it contributes towards feminizing of this unorganized sector in India. From the ancient times it is believed that women are made for household works whereas the men are born with a masculine physique to do heavy jobs like carrying of weights, driving etc. Feminization of this sector is also an emerging issue. As it has been discussed earlier in the legislative and judicial developments that India is in need of a concrete law for unorganized workers but in South Africa laws are filled with humanitarian approach in its core values. Poverty is one of the most important and identified push factors for increasing number of these workers in India. Due to this, a domino effect has been created that affects their low skills and literacy rates. Hence Indian situation is quite vulnerable whereas South Africa can be an inspiration in this pathway.

VII. Concluding Remarks

Domestic workers have their non-replaceable imprint in the society. Though from the critical analysis it is very much clear that they do not have any kind of protection, safety and a dignified human life in India. Where other countries are setting precedents and amending the laws for inclusion of them in the statutes, Indian statutes even the new labour codes with their vague provisions aren’t granting them proper safeguards to continue their life. Amongst this worst situation in India, one significant reference can be drawn from initiatives taken by Tamil Nadu, Maharashtra, Kerala government where they have established domestic worker welfare boards in each district as a threshold of contact.¹²³ Monthly counselling sessions for live-in domestic workers¹²⁴ with a sociologist and psychiatrist can also be a measure to maintain their mental health. Awareness of the new labour codes, the rights available to the domestic workers, the right to have collective bargaining¹²⁵ like other labours of formal sector are the needs of this hour. India is yet

¹²³ Utkarsh Agrawal and Shailja Agarwal, Social Security for Domestic Workers in India, 14(1) *Socio-Legal Review* 55 (2018).

¹²⁴ *Id.*, at 58.

¹²⁵ *Id.*, at 59.

to ratify the International Labour Organization's convention 189 on decent work for domestic workers, which is already ratified by 23 countries.

8. Way Forward

(1) To safeguard and the domestic workers rights and dignity in India there is an urgent need of some affirmative pro-active approach of the judiciary. Such an inspiration can directly be drawn from the judicial decisions of South Africa like the *Mahalangu's case*.

(2) Standardization of wages for them is also required and for this, South Africa's National Minimum Wage Act, 2018 can be taken as a good reference. This paper also opines for enactment of a welfare legislation exclusively devoted for domestic women workers in India and here direct reference of provisions can be drawn from the statutes of South Africa as discussed above with specific reference to Employment Equity Act, 1998 and its amendment in 2013, Social Assistance Act, 2004, Unemployment Insurance Act, 2001 and the Occupational Health and Safety Act, 1993.

(3) The remarkable problem with most of the labour laws in India has been that it excluded the unorganised sector from their purview. Therefore, one of the core constitutional principles of "inclusivity" should also be the under-lying principles of the different labour laws in India so that it recognises the domestic workers sector as well.

(4) Last but not the least, poverty, illiteracy and lack of skills have been the push factors to bring the women into domestic work sector. It is the duty of the state to eradicate poverty, which lies in the root cause of many social problems. The state must ensure equality principles through all the laws and policies. The state in collaboration with the NGOs must take up mandatory vocational training programs for the women in disadvantaged position for widening up their abilities. This will help them get access to better opportunities and also can boost their bargaining power while they enter into contract with the employers, which in turn can ensure them dignified job.