

The Absence of State Law: Domestic Workers in India

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L'Inde, avec ses lois et ses concepts juridiques, ne peut pas, ou ne veut pas, aborder la nature spécifique des travailleuses domestiques, leurs milieux de travail et leurs relations de travail. La non-reconnaissance du foyer en tant que lieu de travail est définie comme un facteur crucial lié à l'invisibilité et à la dévaluation des soins et du travail domestique non payé, ainsi que la majorité du travail effectué par les femmes en Inde. Le sexe, la caste et autres caractéristiques socio-économiques des travailleuses domestiques renforcent cette invisibilité et cette dévaluation, ainsi que les bas salaires et le manque de protection juridique. La complexité de leurs relations de travail empêche les généralisations simples, ce qui rend difficile la formulation de lois. En revanche, celles-ci sont enchâssées dans une économie politique où le travail informel et peu payé, surtout pour les femmes, est encouragé et étendu, ainsi que les institutions non réglementées, comme les agences de placement. Les caractéristiques uniques du travail domestique nuisent également à l'action collective qui peut jouer un rôle pour assurer un changement efficace dans les lois. Tout en décrivant les lois qui peuvent être modifiées pour réglementer le travail domestique, le présent article soutient que la reconnaissance juridique et la protection des travailleuses domestiques rémunérées permettront et forceront un changement fondamental dans la reconnaissance, l'évaluation et la pratique des soins, dans les divisions du travail liées au sexe et dans les politiques économiques et sociales en Inde.

The state and existing laws and legal concepts in India are unable to, or refuse to, deal with the specific nature of domestic workers, their workplaces, and their employment relations. The non-recognition of the home as a work place is identified as a critical factor connected to the invisibility and devaluation of care and unpaid domestic work as well as much of women's work in India. The gender,

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caste, and other social demographics of domestic workers reinforce this invisibility and devaluation, the low wages, and the lack of legal protections. The intricacies of their work relations make simple generalizations impossible, further challenging the formulation of legislation. These are, in turn, embedded in a political economy in which informal, low-paid work, especially for women, is encouraged and expanded, along with unregulated institutions such as placement agencies. The unique features of domestic work also hinder collective action that can play a role in ensuring effective legislative change. While outlining existing laws that can be modified so as to regulate domestic work, this article argues that legal recognition and protection to paid domestic workers will enable and require a fundamental shift in the recognition, valuation, and practices of care, in gendered divisions of work and in economic and social policy in India.

Domestic workers are largely absent from state policy in India, be it in labour laws or social policy. This is despite their long presence and the phenomenal growth of paid, domestic work over the last decade or more. A brief look at the spate of labour legislation in the years immediately following independence shows governmental resistance—active or through neglect—to regulating this sector. As early as 1959, a Domestic Workers (Conditions of Service) Bill was moved in the Rajya Sabha¹ as a “private member’s” bill, but it was never enacted. This bill as well as the All India Domestic Servants Bill, which was introduced in the Lok Sabha,² 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.³ These basic issues remain central to any discussion regarding the rights of domestic workers and, indeed, of most informal workers in India, whether in designing law or in its (non-)implementation.

The litany of lapsed bills and disregarded recommendations does not stop. Again, 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.⁴ The government ignored the

1. Upper House of the Indian Parliament.

2. Lower House of the Indian Parliament.

3. For details, see Nicola Cunningham Armacost, “Domestic Workers in India: A Case for Legislative Action” (1994) 36 *Journal of the Indian Law Institute* 53.

4. *The Industrial Disputes Act, 1947*, Act no. 14 of 1947, 11 March, 1947, <http://pblabour.gov.in/pdf/acts_rules/industrial_disputes_act_1947.pdf>. It was amended in 2010, <http://www.etaxindia.org/forums/other-laws/264-industrial-disputes-amendment-act-2010-no-24-2010*.html>. Kamala Sankaran, Shalini Sinha, and Roopa Madhav, “WIEGO Law Pilot Project on the Informal Economy: Domestic Workers—Background Document,” *Women in Informal Employment: Globalizing and Organizing (WIEGO)*, <http://www.wiego.org/informal_economy_law/india/content/dw_background_note.pdf> at 2.

1974 recommendations of its own Committee on the Status of Women in India on the need to regulate the conditions of domestic workers. The recommendation of the statutory National Commission on Self-Employed Women and Women in the Informal Sector in 1988 to establish a system of registration for domestic workers, a minimum wage, and legislation to regulate conditions of employment, social security and security of employment met with the same treatment. The House Workers (Conditions of Service) Bill, which was formulated in 1989, was not enacted either.⁵ This bill envisaged that every employer would have to contribute to a House Workers' Welfare Fund.⁶

A question to be posed is why do, and how can, governments that speak the language of social justice and social welfare disregard the recommendations of bodies that they themselves have set up and overlook legislative proposals that give workplace rights to their citizens. In the current, neo-liberal socio-political climate in India, one factor is that any law to enhance labour rights is viewed with suspicion. Further, as the political clout of an expanding and increasingly confident middle class has grown, steps that do not appear in their interest may be kept in abeyance. The disregard for domestic workers, however, is much older. Thus, the answer must also be sought in the ability of existing law and legal concepts to deal with the specific nature of the workplace and employment relations as well as the particularities of the workers, including their gender and other social demographics. There have been discernible changes in the employment terms of paid domestic work, but it remains a highly personalized and informal service, where the workplace is the employer's home. In such a work situation, accentuated by isolation, a worker is likely to find it difficult to contest her/his employment conditions. This has been compounded by judgments that have declared that those engaged in personal service cannot be considered "workmen" for the purpose of the 1926 *Trade Unions Act*.⁷ Since the household or home is not viewed as an industrial workplace to which labour laws can apply,⁸ the implications are that the domestic worker cannot have recourse to labour laws or labour courts in case a dispute arises with the employer.

Fundamentally, such a legal position is based on the assumption of the capitalist separation of home and workplace. This assumption is untenable in a context where home-based and artisanal work prevails in industry, agriculture, and services. Feminist scholarship in India has long pointed to this feature of women's work

5. *Ibid.* The bill was introduced in the Parliament in 1990.

6. Indian Social Institute, *The Tribal Domestic Worker at the Crossroads: A Search for Alternatives. A Report of the Status of Tribal Delhi Domestic Working Women* (Delhi: Indian Social Institute, 1993).

7. *Rangaswami v. Registrar of Trade Unions*, A.I.R. 1962 Mad. 231 (India). *Trade Unions Act*, 1926, Act no. 16 of 1926, 25 March 1926, <http://pblabour.gov.in/pdf/acts_rules/trade_unions_act_1926.pdf>. It was amended in 2001, <<http://indiacode.nic.in/fullact1.asp?tfnm=200131>>.

8. See decision of the Supreme Court of India in *Bangalore Water Supply and Sewerage Board v. Rajappa*, A.I.R. 1978 SC 548 (India).

and the non-recognition of unpaid, female, family workers.⁹ In recent decades, increasing informalization of the economy and of work, including women's employment, is evident.¹⁰ Given these characteristics of labour and employment in India, it can be argued that a legal view that abjures the recognition of the home as a workplace is a factor in the widespread non-implementation of labour regulations. More importantly, what it highlights is that the absence of legislation and policy pertaining to domestic workers is both particular to their workplace and work relations and part of a more general pattern in relation to labour and employment in India.

Central to the difficulties in the legal cognition of domestic workers is also the denial that the homemaker is a worker and that unpaid domestic work is work. This denial was extensively contested by feminists in the domestic labour debate of the 1970s,¹¹ and it was critiqued in more recent discussions on the social and economic devaluation of care.¹² In highlighting the patriarchal divisions and valuations of activity that are important in understanding the dynamics of paid and unpaid domestic work, two important dimensions are signalled. These features affect the possibilities of legal regulation over and above the categorization of activity as work or non-work. One is the devaluation and invisibility of domestic work specifically, which ties into the second dimension. This is the persona of the workers or who they are assumed to be—their gender, class, caste, and ethnic characteristics. The social characteristics and work-related commonalities that are shared between paid and unpaid domestic workers, on the one hand, and paid domestic workers and informal workers in other sectors, on the other hand, underscore the inextricable entanglement of gender with other axes of stratification—in particular, class and caste in India.¹³ As elaborated in the next section and at other points in this article, domestic workers are largely drawn from social sections that have been socially devalued/debased and that are voiceless, especially in a context of growing inequalities, and are not easily able to demand societal and legal recognition for their work and working conditions.

A host of institutions determine the work and life conditions of domestic workers—their social network and own household, the employing household, placement agencies, habitat-related concerns (shelter, infrastructure/amenities), and

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9. Maithreyi Krishnaraj, "Women's Work in Indian Census: Beginnings of Change" (8 December 1990) 25(48/49) *Economic and Political Weekly* 2663.
 10. Indrani Mazumdar, *Women Workers and Globalisation: Emergent Contradictions in India* (Calcutta: Stree, 2007).
 11. Maxine Molyneux, "Beyond the Domestic Labour Debate" (1979) 116 *New Left Review* 3.
 12. Shahra Razavi, *The Political and Social Economy of Care in a Development Context: Conceptual Issues, Research Questions and Policy Options*, Gender and Development Programme Paper no. 3 (Geneva: UNRISD, 2007).
 13. As Joanne Conaghan argues, if women are to move from the margins to the centre of labour law, both their diversity and commonality have to be acknowledged. "Feminism and Labour Law: Contesting the Terrain," in Anne Morris and Thérèse O'Donnell, eds., *Feminist Perspectives on Employment Law* (London: Cavendish, 1999) 13 at 21.

state policies.¹⁴ This complexity is reflected in the different local rules that domestic workers are subject to in their labour market engagements, discussed in the sections on work organization, working conditions, and wages. The heterogeneity¹⁵ and local variations make it difficult to arrive at general, abstract, or uniform legal categories. To add to these problems, there is very little background literature or evidence-based documentation to enable an understanding of how these complexities may be incorporated in the regulation of the working conditions for domestic workers.

While attempting to plug this gap, this article pursues the question regarding the reasons for the lack of governmental action on domestic workers. It first delineates the growth and feminization of this category of workers and their demographic and social characteristics. Explanations for the expansion are pointers to a socio-political climate that is discouraging of measures to protect labour. The article then describes the working conditions and wages of domestic workers, particularly of “part-time” workers. Most bills that have been proposed earlier focused on full-time workers, who increasingly form a small proportion of domestic workers but in whose lives the new institution of the placement agency has become pervasive. The heterogeneity and complexity of the demographics of domestic workers, the local variation in their working conditions, and the mediation by placement agencies are not only factors to be taken into account in any law pertaining to their rights. These features also hinder organization and collective action, processes that have been significant in legislative change and the implementation of law in India in relation to both labour and women’s rights.¹⁶

Growth, Demographics, and Social Characteristics

Long-term quantitative data on paid domestic workers is minimal, in part because of their relatively small numbers but also in keeping with the paucity of data on most forms of women’s informal work. Following lobbying by scholars and activists, there has been a growing recognition of the significance of paid domestic work in female employment, and the category “private households with employed persons” was included in the last two rounds on employment and unemployment in the National Sample Survey (1999–2000 and 2004–05).¹⁷ The sub-categories include housemaid/servant, cook, and governess/babysitter (see Table 1).

The increase in the number of domestic workers and its various sub-categories has been dramatic, its importance for female employment has grown, and there

14. Sankaran, Sinha, and Madhav, *supra* note 4.

15. Highlighted in Patricia Uberoi and Sreemati Chakrabarti, eds., *Gender and the Political Economy of Domestic Service: Comparative Perspectives from India and China*, Occasional Studies no. 2 (Delhi: Institute of Chinese Studies, 2004) at 16.

16. Indu Agnihotri and Vina Mazumdar, “Changing Terms of Political Discourse: Women’s Movement in India, 1970s–1990s” (22 July 1995) 30(29) *Economic and Political Weekly* 1869.

17. This source offers the most reliable data at the national level on employment.

Table 1
Growth of Domestic Workers by Category

	1999–2000			2004–05		
	Number of workers	Percentage of total female employment	Female share	Number of workers	Percentage of total female employment	Female share
Housemaid/servant	438,200	0.4	80.4	2,381,100	1.6	87.4
Cook	6,400	0.0	72.6	96,600	0.1	73.9
Governess/babysitter	2,600	0.0	76.4	69,600	0.0	74.2
Total domestic workers	447,100	0.4	63.4	2,547,400	1.8	71.6

Source: Rajni Palriwala and Neetha N., "Paid Care Workers in India: Domestic Workers and Anganwadi Workers" (Geneva: UN Research Institute for Social Development (UNRISD), 2009), UNRISD, <http://www.unrisd.org/80256B3C005BCCF9/httpNetITFrame?ReadForm&parentunid=0C1833CF97AC0B21C12575CC004FB067&parentdoctype=paper&netitpath=http://www.unrisd.org/unpublished_/2005gd_/indiarr4rev/content.htm>.

has been a further feminization of this occupation.¹⁸ The sub-category housemaid/servants, which formed about 90 percent of domestic workers in 2004–05, has shown a distinct growth of 7 percent over this same period. By and large, this article speaks of the urban situation, where most domestic workers are found. However, low wages and personalized, informal, and shifting contracts would be even truer in rural areas.

During the 1970s, desertion and widowhood were a major factor in women taking to domestic service, such that they tended to be older and were often the heads of their households.¹⁹ By the 1980s, there was a downward shift in the age of domestic workers as women joined migration streams to cities.²⁰ In a 1993

18. Part of this increase may have been due to more careful enumeration with greater sensitivity to women's work and recognition of this category of workers. Though the macro data is not reliable, combined with micro-studies, it enables insights into the broad trends and socio-economic characteristics. For a more detailed discussion of the trends and patterns discussed in this section, see Palriwala and Neetha, "Paid Care Workers," *supra* first unnumbered note at 6-11.

19. Nirmala Banerjee, *Poverty, Work, and Gender in Urban India*, Occasional paper no. 133 (Calcutta: Centre for Studies in Social Sciences, 1982).

20. Nirmala Banerjee, *Unorganised Women Workers: The Calcutta Experience* (Calcutta: Centre for Studies in Social Sciences, 1992).

survey, employers expressed the view that young women were more reliable, obedient, and efficient and preferable for childcare and elder care.²¹ Among settled or second-generation migrants, women took over the jobs of their mothers or their mothers-in-law, resulting in a quasi-hereditary, familial tie with the employer. By 2004–05, the age profile had changed again, and a large proportion of domestic workers were between the ages of thirty-one to forty and twenty-one to thirty years. Currently, married women account for 49 percent of domestic workers, followed by widowed or divorced/separated women (31 percent).²²

Most domestic workers, especially women, have little formal education. In 2004–05, 57 percent were “illiterate,” which is an indication of their socio-economic backgrounds. Scheduled Castes (SC),²³ who were viewed as “untouchables” in the Hindu social hierarchy, form a large proportion of domestic workers (33.4 percent) and the majority of migrant workers.²⁴ Although the lines between categories of domestic work are not always sharp in everyday practice, SC workers are much more likely to be housemaids/servants and governess/babysitters than cooks.²⁵ However, in recent years, their numbers in the last category are gradually increasing. Ideologies of childcare and a persisting caste ideology of purity and pollution are important factors that shape this pattern. Upper- and middle-caste Hindus would not allow a lower caste person or Muslim to enter their homes, let alone their kitchen.²⁶ However, micro-studies have found that employers are allowing their need for domestic workers to take precedence over these “purity” norms, especially in metropolitan cities and for specific tasks.²⁷ The process of migration has also facilitated the relaxation in caste rules. A large proportion of domestic workers would not have been allowed into the domestic spaces of the upper castes in their place of origin.²⁸ Similarly, people who are asserting their social status would not have considered working as domestic “servants,” but they are willing to do so subsequent to migration. They may, however, decline to perform certain

21. Indian Social Institute, *supra* note 6 at 36.

22. Due to the small numbers, the disaggregated data is not completely reliable.

23. Scheduled Castes suffered severe discrimination and deprivation and, to a greater or lesser extent, continue to do so. They are listed in Part XVI of the 1950 *Constitution of India* and have been provided with specific measures of positive discrimination in education, public employment, and electoral representation.

24. Leela Kasturi, “Poverty, Migration, and Women’s Status,” in Vina Mazumdar, ed., *Women Workers in India: Studies in Employment and Status* (New Delhi: Chanakya, 1990) 3; and Neetha N., *Migration, Social Networking and Employment: A Study of Domestic Workers in Delhi*, NLI Research Study Series no. 37 (NOIDA: V.V. Giri National Labour Institute, 2003).

25. Fieldwork by the authors in Tamil Nadu, Delhi, and Haryana has been a crucial source of data in this and later sections.

26. Paliwala and Neetha, “Paid Care Workers,” *supra* first unnumbered note at 11; Paliwala and Neetha, “Care Practice and Care Bargains,” *supra* first unnumbered note.

27. Institute of Social Studies Trust, *Domestic Workers in Urban Delhi* (Delhi: Institute of Social Studies Trust, 2009) [unpublished report].

28. Parvati Raghuram, “Caste and Gender in the Organisation of Paid Domestic Work in India” (2001) 15 *Work, Employment and Society* 607.

tasks in order to assert that they are not of low status. For instance, workers from “Other Backward Castes”²⁹ have been known to refuse to undertake “polluting” work such as cleaning toilets in order to assert that though they are domestic workers they are not ready to do “undignified” work.³⁰ Thus, the shift in caste norms is many sided, and the correlation between a “low” caste rank and a domestic worker is not absolute.

Migration is not an easy option. The supply of workers is maintained through a regular flow of distress migrants of varied and shifting rural origins and socio-economic backgrounds.³¹ They are vulnerable due to their absolute need for income, their unfamiliarity with the language and culture of the towns and cities they have moved to, the power of the “landlords” in the slums and “unauthorized colonies” where part-time workers live, the threat of being forced to move again, and their lack of powerful support networks. Thus, the employer and domestic worker are separated not only by class and education but also by caste and social status, voice, and political clout.

Why Have Domestic Workers Grown in Number?

The demographic and social characteristics and low wages of domestic workers are significant in explaining the increase in both their supply and demand in which economic processes have been central. These include trends in industrialization and urbanization, a surplus of unskilled workers, and an increasing inequality between and within rural and urban areas.³² Despite the replacement of family labour with hired workers among the better-off sections in rural areas, a widespread agrarian crisis has pushed the rural-to-urban migration of women.³³ In Pune, Maharashtra, in western India, domestic workers are finding that the land and houses that they possess in their villages are insufficient for family survival. Women are moving with their families to the city to live in crowded slums with

29. Other Backward Castes is an official category consisting of castes placed just above the “Untouchables” in the caste hierarchy. They can avail of statutory measures of positive discrimination, more limited in range than for Scheduled Castes and Scheduled Tribes.

30. Institute of Social Studies Trust, *supra* note 27.

31. The proportions of migrants are higher among live-in workers, and a majority of them are drawn from the socially and economically backward districts of Jharkhand, Orissa, West Bengal, and Assam. Neetha, *supra* note 24 at 12–17. Most of these areas are populated by groups designated as Scheduled Tribes, in terms similar to that for Scheduled Castes (see note 23 in this article). They are distinguished by their “tribal characteristics” and by their spatial and cultural isolation. While they are outside the caste categories, they tend to be more deprived economically than even the Scheduled Castes.

32. Palriwala and Neetha, “Paid Care Workers,” *supra* first unnumbered note at 16; and Palriwala and Neetha, “Care Practices and Care Bargains,” *supra* first unnumbered note.

33. All India Democratic Women’s Association, *Commission Paper on Agrarian Crisis, Migration and Impact on Women*, Seventh National Conference (Bhubaneswar: All India Democratic Women’s Association, 2004).

next to no amenities but in proximity to middle-class areas where they can be hired as domestic workers.³⁴

Closures and shifts in organized industry is another important economic factor in the growing supply of paid domestic workers, which, along with the agrarian crisis, is linked to neo-liberal economic policies. The shut-down of textile mills in Mumbai and Ahmedabad and the relocation of polluting factories in Delhi has meant that the predominantly male workforce has become unemployed, compelling women to seek paid work in the informal sector.³⁵ Thus, in addition to widows and women who have been deserted, which were mentioned earlier, the loss of male wages has been a significant factor in the growth of this section of workers. Women keep shifting between construction work and domestic work.³⁶ The sheer lack of alternative paid work in urban areas, especially for young girls and women with limited education, is another factor. Domestic work is the most readily entered and available employment, especially for migrants.³⁷ It is perceived as unskilled work and an extension of the work that women naturally do in their own homes. Thus, the implications of both of these supply-side explanations is that a sudden onset of distress, which makes women the primary breadwinners in their households, and a lack of livelihood and skills can lead women (and, to a lesser extent, men) into paid domestic work. The necessity to continue to earn a living weighs heavily on them.

The increase in the demand for domestic workers has been related to both cultural factors and economic trends that are associated with the changes that have occurred in urban India. The growth of the urban middle class, a *nouveau riche*, and a rural elite (with urban links) in the form of contractors, agents of multinational corporations, traders, and transporters is noticeable over the last two decades and, given the low wages for domestic workers, has allowed the expansion of a servant-employing class. The number of women in non-home-based, paid employment has been growing among many sections of the urban, middle class. The enrolment of girls in formal, middle, and higher educational institutions has also been rising, in a situation of declining family size and sex ratios.³⁸ In addition, mothers-in-law, who assumed that their daughters-in-law would be taking over such

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34. Kiran Moghe, "Shouldering the Double Burden: Experiences of Organizing Domestic Workers in Pune City" (Paper presented in the Seminar on "Globalization and the Women's Movement," Centre for Women's Development Studies, New Delhi, 20–22 January 2006) [unpublished]; Ravinder Kaur, "Migrating for Work: Rewriting Gender Relations," in Sadhna Arya and Anupama Roy, eds., *Poverty, Gender and Migration* (Delhi: Sage, 2006) 192.
35. Jan Breman, *Social Exclusion in the Context of Globalization*, Working Paper no. 18, Policy Integration Department, World Commission on the Social Dimension of Globalization (Geneva: International Labour Office, 2004) at 11; Moghe, *supra* note 34.
36. Neetha, *supra* note 24; Moghe, *supra* note 34.
37. Kaur, *supra* note 34 at 196.
38. Women per 1,000 men. See Rajni Palriwala and Neetha N., *The Political and Social Economy of Care: India Research Report 1* (Geneva: UNRISD, 2008), UNRISD, <[http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=52825846F6477276C1257417002E6DCC&parentdoctype=paper&netitpath=80256B3C005BCCF9/\(httpAuxPages\)/528](http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=52825846F6477276C1257417002E6DCC&parentdoctype=paper&netitpath=80256B3C005BCCF9/(httpAuxPages)/528)

domestic chores, may refuse to take on this work themselves, other than child-minding. As a result of all of these factors, there are fewer women per household to share the domestic burden.

While externally located demands on women's time may have expanded, there has been little reduction in domestic requirements. Domestic appliances are available in many employer households, but they are often used more as status symbols than on a daily basis. They are considered to be additions to the daily domestic worker, used when the latter is absent and since the climate demands frequent cleaning. The fact that labour-saving domestic technologies have not necessarily reduced the time spent on housework but, rather, engendered higher standards of cleanliness and household maintenance has been a common global pattern.³⁹

What is more, children are often seen among the upper middle and upper classes to require more personal and individualized attention by adults/mothers.⁴⁰ Thus, domestic childcare time has expanded, even though school enrolment has increased. There is also a dearth of state-run, employer-maintained, or affordable commercial childcare services.⁴¹ Working mothers are likely to be absent for many hours beyond what a common daycare or preschool schedule offers, even if such establishments are available and accessible. And, for many, homecare with nannies is the preferred option. Hired domestic workers allow both working and non-working middle-class parents to devote precious time to precious children. In addition, despite the trend towards nuclear households in urban areas, most elderly persons who are in need of care live in familial settings. Another aspect is the continuing demand for home-cooked food. Labour-saving, semi-processed foods tend to be expensive, and this limits their widespread use. Finally, religious rituals seem to have multiplied and add to the domestic work burden.⁴² In all of these situations, the availability of cheap domestic labour enables households to maintain the lifestyle to which they aspire or to which they are accustomed.⁴³

From this discussion, it can be argued that hired domestic workers buttress the patriarchal construction and divisions of work. They replace the labour of family women and ensure that older women and familial men need not be drawn into the various components of domestic work that did not fall on them earlier.

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39. For a discussion of the main points of the debate on this issue, see Michael Bittman, James Mahmud Rice, and Judy Wajcman, "Appliances and Their Impact: The Ownership of Domestic Technology and Time Spent on Household Work" (2004) 55 *British Journal of Sociology* 401.
40. Stella Mascarenhas-Keyes, "Migration, 'Progressive Motherhood' and Female Autonomy: Catholic Women in Goa," in Leela Dube and Rajni Palriwala, eds., *Structures and Strategies: Women, Work and Family* (Delhi: Sage, 1990) 103 at 113-16.
41. The implications of this lack as well as of maternity leave are a critical issue for domestic workers (Palriwala and Neetha, "Paid Care Workers," *supra* first unnumbered note), particularly since a large proportion of them fall into the reproductive age groups.
42. A number of the rituals are a reiteration of women's dependence on marriage and the husband.
43. Palriwala and Neetha, "Paid Care Workers," *supra* first unnumbered note at 18.

Indeed, hired domestic workers enable these men and elderly women to shed some of the tasks that they used to undertake. Domestic workers are seen to supplement the work of familial women, whether employed or not and are their responsibility, thereby reiterating the patriarchal norms in marriage.⁴⁴ This situation is enabled by class and caste inequalities as well as by economic processes that ensure that paid domestic workers are relatively cheap, available, and unprotected. The low social status and wages of hired domestic workers reinforce the lack of value given to domestic work, in particular, and to women's work, in general, as well as to the categorizations of productive and unproductive work. The argument, therefore, is that the social hierarchies of caste, class, and gender that shape the political/policy environment engender a resistance to a legal framework for domestic workers. The structure of wages is important in this case, but to appreciate this structure the complexities of the work arrangements need to be elaborated.

Changing Work and Work Organization in Domestic Service

Until a few decades ago, non-familial, domestic workers, both rural and urban, tended to be attached to a single household in work relations that may be described as feudal. They would be responsible for a single or multiple tasks, depending on the economic and social status of the employer, the size of the household, and the caste of the worker. Whether they lived as part of the employer's household or not, their hours of work were long—ten to fourteen or more hours per day. Despite remarkable continuities, there have been significant changes in the organization and relations of work, especially in the last two decades.⁴⁵

Most of the changes are linked to one central development—the growth in “live-outs” or “part-time” domestic workers. The changes may be delineated as follows. First, the tasks and hours appear to be more clearly defined than in the past and separated from each other by employee and in payment (despite the fact that there are constant tussles and negotiations over the boundaries of tasks and the hours the worker has contracted for). Second, the market and the language of contract explicitly frame the terms of employment since monetary wage rates are fixed by task. Unquantified perks in kind are a supplement (albeit important), rather than central, to the payment, as was the case earlier. Third, the personal relation remains significant, and this is not only because of the intimate nature of the work or the nature of the labour market but also because of the lack of any state social security. Thus, the worker must depend on the employer for loans, assistance in times of emergency, and other help. Fourth, a much wider range of households hire domestic workers,

44. This is evident in a range of popular writing and films as well as in everyday conversations among women, wherein the maid and the working, married woman are presented in a symbiotic and conflictual relationship.

45. Palriwala and Neetha, “Paid Care Workers,” *supra* first unnumbered note at 15-18.

such that the demand for hired domestic workers has cut across caste, religion, and region. Fifth, while employer-worker relations in the past have been based on shared cultural norms and values, these are now manifestly absent since workers and employers are no longer likely to be from the same region.

Urban, middle-class households with small homes prefer to hire part-time workers and avoid the responsibility of giving them board and lodging. It allows them to hire according to their budget and divide up the tasks they wish to out-source. The workers, who are often female, undertake diverse tasks in the households that they work in, including housecleaning, laundry, cooking, dishwashing, care of children and the elderly, shopping, dropping and fetching children to and from school, and other activities associated with the regular and smooth functioning of a family household. Although they may work for only a few hours in a particular household, the total hours of working may add up to a full day, seven days a week. Thus, the characterization as “part-time” work may only be from the employer’s perspective.

While domestic employment as such tends to be unstable, part-time work is both more unstable and more flexible. Uncertainty is largely on account of conflicts due to the nature of the intimate and yet contractual relationship, arbitrary dismissals without notice or compensation, and relocation of employers. Availability of non-domestic employment or work closer to the home, changing income needs, marriage, and migration are factors that may necessitate that the worker change her or his employer.⁴⁶ Part-timers may prefer to work part-time in more than one household, since they have more flexibility if they work for many employers and are in a better negotiating position. This flexibility enables them to take care of their own domestic tasks, particularly childcare. If they live close to their place of work, they can return home for short periods during the day. The fragmented nature of their work, the multitude of tasks, a multiplicity of employers, and the instability of employment pose challenges in documenting and research on these domestic workers, in calculating their wage rates and terms of employment, and in attempts to organize them. The intimacy engendered between domestic workers and their employers, their dependence on personal rapport, and the hope that employers will help in an emergency further hamper unionization.

Although live-out workers account for the largest segment of domestic workers, live-in workers are also on the increase. The broader contours of work organization and relations across these categories remain the same, with varying details, but there are specific developments that are central to live-in workers. The most important of these is the role of placement agencies in recruitment and in mediating the terms of work and work relations. These agencies are also important from an organizational and legislative perspective.

46. *Ibid.* at 16; Palriwala and Neetha, “Care Practices and Care Bargains,” *supra* first unnumbered note.

Placement Agencies and “Live-in” Workers

Placement agencies that supply live-in domestic workers have proliferated in the cities. They are very heterogeneous in scale, operation, and lines of services offered, and most are highly informal.⁴⁷ Organizational patterns range from church-initiated agencies to purely commercial establishments.⁴⁸ Owing to these diversities, it is extremely difficult to arrive at a reliable estimate of the number of agencies that currently exist. The more formal placement agencies have a legal or socially approved framework that guides their existence as service providers of domestic workers to urban households. They may be registered under, or backed by, a trade union (Self Employed Women’s Association), a cooperative society (Nirmala Niketan), a voluntary organization (Tribal Development Society), or a church organization (Yuvati Seva Sadan). The registration of the parent organization (under the *Trade Unions Act* or the *Society’s Registration Act*⁴⁹) is also treated as the registration for the placement agency. They work with a clear organizational set up and try to enforce more or less defined terms and conditions of placement. Apart from placement, other services may be provided to domestic workers, including board and lodging until they are placed, soft and vocational skill training (for example, literacy classes, basic hygiene and cooking, handling of household appliances, attending phone calls, and so on), means of socializing through weekly meetings, periodic excursions, and the celebration of regional festivals.

Some of these agencies extend help to migrant workers who they have not placed but who have been cheated/exploited by other middlemen or employers. Their interventions may be voluntary, based on information received from networks of domestic workers, church organizations, or tips provided by “socially vigilant” citizens. In some cases, these agencies are requested by government organizations to provide assistance. Thus, they may take up the dual role of referees/regulators and players in the placement business, largely on account of the fact that there is no approved government agency or legal authority to take up the issues of the domestic workers.

47. This section draws on Neetha N., “Placement Agencies for Domestic Workers: Issues of Regulation and Promoting Decent Work” (Paper prepared for the National Consultation with the Civil Society on Domestic Workers Issues, International Labour Organization, New Delhi, 15–16 July 2009) [unpublished]. The author suggests that in 2008, there were between 800 to 1,000 agencies in Delhi alone.

48. The origin of placement agencies in many cities could be traced to initiatives by Christian missions to provide employment to poor, tribal women with the help of their counterpart churches in the cities. The presence of the church provides some degree of security and acceptability to this form of rural-urban migration as well as creating a sense of obligation. Due to this, many commercial placement agencies also use church-related symbols and name their establishment after Christian Saints!

49. *Societies Registration Act*, 1860, Act no. 21 of 1860 (21 May 1860), <<http://indiacode.nic.in/>>.

At the other end of the spectrum are the agencies that are run or managed by an individual or individuals with purely commercial objectives and profit considerations, with varying terms and conditions of work.⁵⁰ Like other home-based workshops and enterprises in the informal sector in India, placement agencies frequently change their identities, location, and phone numbers—in some cases, because of their intermittent engagement in the business and, in most cases, to avoid the authorities and previous clients (both employers and workers). Few placement agencies have established office set ups. Most of them function in a small room that is located in a lower middle-class locality. The offices contain minimal furniture and a small sign board to suggest that they are legally registered. The negligible services provided to the worker or the employer, once the commission has been received, does not accord with the various welfare provisions that are stated in their written objectives. A large number of agencies fall in between the two extremes, the mode being close to the highly informal model, providing irregular services to the employers as well as workers.

Formalized organizations recruit workers through various channels, including regional parishes/priests and organizations, who act as connecting links or facilitators. With respect to the recruitment of workers, there is considerable similarity across agencies, not least in developing a sense of dependence and obligation towards the agency among the workers. Each agency may have a number of recruiting agents attached to them, who make visits to the source rural areas and look for families/individuals who can be persuaded to send their girls into domestic service.⁵¹ Apart from these recruitment agents, workers who have been earlier placed in domestic service, religious and kinship networks, and so on also help in the supply. Chattisgarh, Jharkhand, Orissa, and West Bengal are the main areas from where women, mostly unmarried girls, are sourced.

The profits earned by placement agencies are high compared to the costs involved, including the costs, if any, for office space, board and lodging for unplaced workers, and payments to recruiting agents.⁵² The lack of regulation adds to the entrepreneurial attraction. All of the agencies charge a registration fee and a commission from the employer that ranges between 3,000–10,000 rupees

50. The extent of informality is evident from the following case: Mr. X had migrated to Delhi from the state of Jharkhand looking for a job. Through a contact, he started working in a canteen that provides door-to-door delivery of food. As he is from Jharkhand, the person who owned the canteen asked him whether he can get a “girl” from Jharkhand to work as domestic help for someone known to him. He was also promised a commission. He got one girl (a relative of his) and slowly realized that placing young women in domestic work is a lucrative business. Initially, his recruitment circle was limited to relatives, neighbours and acquaintances, but now he finds workers through extended networks. His commission in 2008 ranged between 4,000 to 7,000 rupees. The commission depends on the requirement of the employer and the age and work experience of the domestic worker. He has no office and runs this business purely through contacts and his two mobile phones. Neetha, *supra* note 47.

51. Agents create debt bondage with prospective domestic workers or their family members by providing an advance.

52. On average, the commission given to a labour recruiting agent is 1,000–3,000 rupees per worker.

(in 2008) for a contract of eleven months.⁵³ A few agencies even take a repayable security deposit from the employer.

Workers depend on these middlemen since they do not know the local language or city ways. Most agencies do not share information regarding the negotiated wages with the workers. Most of the women are illiterate and are not aware of the employment terms. In many cases, the salary is directly collected from the employer by the placement agency. A considerable proportion of the domestic worker's salary is adjusted towards brokerage expenses, travel costs, boarding, and so on. Yet, the agencies usually take little responsibility for the worker and her/his working or living conditions. Nor do they make an extended commitment to the worker, such as support during illness or provision of interim stay when the employers are away. Cases of denial of wages, virtual incarceration in the employer's home, refusal of leave because of payments made by the employer to the agent, as well as sexual abuse by the agent or in the employer's household have been reported.⁵⁴ There are no regulatory mechanisms that ensure the accountability of placement agencies. The growing realization of the exploitative practices of these agencies, however, has been instrumental in bringing the issue of regulatory legislation in domestic service to the forefront—an aspect that will be taken up in the section on organizing workers.

Wages of Domestic Workers

Macro-level wage data are collected in the National Sample Survey for a small subset of casual and regular workers covering selected occupational groups. According to the data, within the already very low wages for domestic workers, women's wages are even lower, especially among regular, urban domestic workers. In 2008, the wages of women domestic workers were less than the national floor level minimum wage of 80 rupees per day, both in rural and urban areas.⁵⁵ Wage rates also vary by region and type of work, although some of this variation may be a result of the relatively small numbers surveyed. Cooking is the best paid occupation, but in all categories female wages are lower than male wages, as is the case in other occupations. It is striking that while qualitative findings indicate that girls/women are preferred as childminders and governesses, male wages are higher even in this category.⁵⁶

Our own fieldwork data show that wages of urban, part-time workers are first of all differentiated by the broad division of work, such as cooking, cleaning, and baby

53. Agencies frequently shift the workers from one employer to another to maximize commissions, even without consulting the workers.

54. Neetha, *supra* note 47 at 1.

55. State governments are supposed to fix minimum wages such that they are no lower than the national floor-level minimum wage. Government of India, *Minimum Wages Act*, 1948, Ministry of Labour and Employment, <<http://labour.nic.in/wagecell/welcome.html>>.

56. An exception is among rural, casual workers, where sample size affects the data.

sitting.⁵⁷ Cleaning tasks, which are paid between 100–400 rupees per month (in 2008), include dusting, sweeping and mopping, laundry, and dishwashing.⁵⁸ The wage is tied to the hours that are spent at this task daily, which vary with frequency of visits in a day, the size of the house, and the number of household members. However, since equivalence is difficult, part-time workers may avoid working for large households. The same or different workers may undertake each of the cleaning tasks, such as cooking, childcare, and elder care. The returns per hour of work decline as one moves from cooking, to elder care, and then to childcare, reflecting social and cultural notions of skill, “purity,” and labour intensity.

The wages of live-in workers range between 1,000 to 4,000 rupees per month (in 2008), depending on the worker’s experience and the specific tasks to which they are assigned. Board, lodging, clothes, and other articles of daily use are provided. In looking at the returns to their labour, however, a number of features have to be noted. Despite the specification of their work, the workers often must undertake multiple tasks, though the intensity of their involvement may vary. They are on call twenty-four hours a day. The basic wage, perks, and benefits, such as festival bonus, loans, medical costs, and gifts at life cycle rituals, all differ as a result of the length of service of the worker and the personal ties that have formed between them and their employers, which is likely to be closer for live-in, rather than part-time, workers.

The fragmentation of the domestic labour market by the area of residence and the class of the employer within one town/city is noticeable. The same broad tasks are elaborated and often performed differently under varied conditions of service. Segmented and niche markets have developed. Thus, for example, the rates paid by expatriates are among the highest. Ethnic stereotypes regarding skill and efficiency also affect the wages and treatment of domestic workers.⁵⁹ In sum, the wage structure and service packages are complex and variable, making it problematic to arrive at a uniform wage rate for domestic work even for a specific locality.⁶⁰ This makes for difficulties in unionization and legislation and is used as an argument to justify the lack of regulation. The main commonality is the tendency for wages to be lower than the official minimum and for paid leave to be denied. A weekly day off, annual vacations, maternity leave, childcare, or sick leave are rare.⁶¹ Every leave is a matter of negotiation and is likely to mean a wage cut. Workers may be dismissed for deficiencies in work, lateness, taking “excessive” leave, “answering back,” or suspected theft.⁶² Nor are occupational

57. Primary data collected by the authors, including the UNRISD study.

58. Palriwala and Neetha, “Paid Care Workers,” *supra* first unnumbered note at 12; Palriwala and Neetha, “Care Practices and Care Bargains,” *supra* first unnumbered note.

59. See Surabhi Tandon Mehrotra, *Rights and Dignity: Women Domestic Workers in Jaipur* (New Delhi: Jagori, 2008), Jagori, <http://jagori.org/wp-content/uploads/2008/09/cover_jaipur_report_english.pdf>.

60. Palriwala and Neetha, “Paid Care Workers,” *supra* first unnumbered note at 13.

61. Neetha, *supra* note 24; Kaur, *supra* note 34 at 206.

62. Kaur, *supra* note 34 at 206-7.

health hazards, including bodily pains and reactions to cleaning agents taken into account. The hierarchy embedded in the “mutually agreed terms” is reflected even in the food that workers are given to eat. Although they are a part of the middle-class and elite households, and despite their personalized ties, domestic workers are increasingly viewed as suspect strangers. The ambiguities arising out of the categorizations such as live-in and live-out or part-time and full-time workers, the complexities in wage fixation, and the variation in wages and hours and terms of work add to the difficulty of organizing domestic workers, which is an issue discussed in the next section.

Organizing Domestic Workers

Participation in union activities is difficult due to the hours and nature of domestic workers’ work and their social and political vulnerabilities as well as because of the familial responsibilities for part-time workers and the isolation of live-in workers. Only a small fraction of domestic workers in the country are in touch with associations or are unionized. The lack of unionization is a critical factor in their exclusion from labour laws, the violation of national, legal norms in their wage fixation, and the absence of entitlements to various social security benefits. However, although the beginnings of success as a pressure group are fairly new, associations of domestic workers in India have a long and mixed history. One of the earliest collective actions of domestic workers was a twenty-six-day hunger strike called by the New Delhi-based All India Domestic Workers’ Union in 1959, which received support in a few urban centres. A call for a one-day solidarity strike led to the introduction of the two private members’ bills in Parliament that were mentioned at the beginning of this article.

Organizations of varied perspectives have initiated efforts to unionize domestic workers in recent decades in different parts of the country.⁶³ The National Domestic Workers Movement (NDWM), which is a non-governmental organization with strong links to the Catholic Bishops’ Conference of India (CBCI), was formed in 1985 in Mumbai, Maharashtra.⁶⁴ Its stated objectives are the empowerment and dignity of domestic workers, including supporting them in the “fight for just wages and human working conditions.”⁶⁵ The organization has campaigned for the rights of domestic workers in many states and claims to have reached over two million domestic workers across the country. It has been predominantly concerned with issues involving child workers, which follows from the CBCI social agenda, and with full-time, live-in domestic workers, which is a corollary of its

63. Palriwala and Neetha, “Care Practices and Care Bargains,” *supra* first unnumbered note.

64. The organization was established by a Belgian missionary, who began to work with domestic workers in 1966 in the state of Tamil Nadu. It is now active in twenty-three states. National Domestic Workers Movement, <<http://www.ndwm.org/aboutus/mission.asp>>.

65. *Ibid.*

networks with placement agencies. Some other associations and unions of domestic workers have also set up their own placement agencies. It is important to note, however, that even those workers attached to well-managed agencies cannot be assumed to be members of collective workers' associations. Further, there may be a conflict of interest, given the duality of the role of placement agency-cum-unions, with other domestic worker groups wary of allying with them.

Other organizations, such as the All India Democratic Women's Association (AIDWA),⁶⁶ have taken up specific issues or have organized workers with small successes within a limited area.⁶⁷ Issues include the amount and the non-payment of wages, recognition as workers, sexual harassment, physical violence, forced attachment of children, compensation for work-related injuries, legal aid, and the formation of self-help groups.⁶⁸ Some of the formal placement agencies described earlier also network with similarly placed organizations to form coordination committees or pressure groups demanding regulation and policy benefits for domestic workers. Thus, the NDWM has played a role along with other organizations in bringing in minimum wage legislation in Karnataka and a state welfare board bill for domestic workers in Maharashtra.

Some efforts to unionize fell apart when they took up the issue of wages. It was difficult to work out an acceptable minimum wage, both in terms of the principles to be used and due to the complexity of the work and payment regime, as discussed earlier.⁶⁹ There are several ongoing debates on what should be standard practice: whether the wage ought to be time rated or piece rated; whether it should be based on house size or the number of persons per household; whether it should include payments in kind or not; how the costs to the employer of boarding, medical care, and other necessities should be calculated; and the multiplicity of employers. In addition, the constant inflow of workers and the inability of lower middle-class households to afford higher paid workers also seemed to make the fixing of wages problematic. However, it should be noted that some differences in wages and the treatment of domestic workers within one location can be linked to the different regional histories of labour unionization, in general, rather than that of the domestic workers themselves.⁷⁰ This points to the argument

66. The All India Democratic Women's Association was established in 1981 and had over ten million members in 2007, spread across twenty-three states. Its members are predominantly poor women, and it works for women's rights as workers, citizens, and as women and campaigns against casteism, communalism, and so on.

67. Examples include unions of domestic workers or non-governmental organizations such as the Gharelu Kamgar Sangh and Mahila Seva in Karnataka, the Domestic Workers' Forum in Delhi, the Nirmala Niketan, and the Self-Employed Women's Association.

68. Jagori, *Rights and Dignity: Women Domestic Workers in India*, Infopack (Delhi: Jagori, 2008).

69. Sindhu Menon, "Domestic Worker or Paid Slave? Plight of Domestic Workers in Bangalore City," Labour File, <<http://www.labourfile.org/PrintDocument.aspx?ID=134>>.

70. Mehrotra, *supra* note 59, found that despite being migrants, Bengali domestic workers in Jaipur reported slightly better pay, facilities and benefits in kind, higher evaluation of their work, and an ability to discuss issues with their employers compared to their Rajasthani peers. Labour

made at the beginning of this article that the regulation of wages and the working conditions of domestic workers has to be sought in tandem to the working conditions of other informal workers in India.

Legislative Possibilities for Domestic Workers

A defining feature of domestic work and of social and economic life in India is the predominance of informal work and informal workers, especially among women. Social security measures and the regulation of hours and wages are largely directed at the small formal sector. Even in this case, the minimal regulatory framework is bypassed with the knowledge of state officials. In the private sector, if unionization is absent, and in the public sector, through the push to informal employment. Several pieces of existing legislation that can assist in protecting and regulating domestic workers are not accessed by domestic workers for various reasons.⁷¹ Further, given the invisible, personalized, and complex nature of the work patterns of domestic workers, their class, caste, and gender characteristics, as well as their lack of social or political voice, the necessity to legislate and regulate domestic service can be even more easily ignored.

Domestic and international pressures have, however, brought the concerns of domestic workers into the public sphere. Thus, some state governments have opted for state legislation to rescind the exclusion of domestic workers from the 1948 *National Minimum Wages Act*.⁷² Counter-political pressures are evident, however. Domestic work was removed from the scheduled list under the *Minimum Wages Act* in the state of Karnataka in 1993, a year after it was first included. In June 2005, Karnataka again brought “domestic work” back into the schedule. According to the notification, a domestic worker who worked for eight hours was entitled to between 1,600 and 1,800 rupees per month. If the number of members in the employing household were more than four, the charges went up to 2,200 rupees. If she or he worked more than eight hours, the rate doubled. Unfortunately, not only is this rate below the national minimum wage even in Karnataka where there are numerous organizations of domestic workers, but legislative benefits still remain largely on paper.

Other states where a preliminary or final notification including domestic workers in the minimum wages schedule has been announced are Andhra Pradesh, Bihar, Kerala, Maharashtra, Rajasthan, and Tamil Nadu. Laws to enable domestic workers to avail of social security provisions have been amended or passed in Kerala (Kerala Artisan and Skilled Workers’ Welfare Fund), Maharashtra

unionization has been long and widespread in Bengal and can be deduced to be a factor in this difference.

71. Roopa Madhav, “Legal Recognition of Domestic Work” (2010) 8 Labour File 41.

72. The central government sets minimum wages for forty-five occupations, but domestic work is excluded. Government of India, *supra* note 55.

(Maharashtra Domestic Workers Welfare Board Act, 2008), and Tamil Nadu (*Manual Workers Act [Regulation and Employment and Conditions of Work]*, 1982).⁷³ However, the gaps between the existence of a law or welfare program, knowledge of it among potential beneficiaries, and the actual operation and coverage have to be noted.⁷⁴

After much lobbying, domestic workers were brought within the ambit of the recent 2008 *Unorganized Workers Social Security Act*.⁷⁵ Although the rules under this act have still to be framed, the fact is that this law does not provide for any enforceable or justiciable social security entitlement for unorganized workers. The only legal entitlement in the entire act is the right of all unorganized sector workers above fourteen years of age to register themselves and receive a “smart” identity card. It has been argued by many that the name of the act itself is a misnomer because it does not guarantee anything other than the formation of advisory boards at the central and state levels. There are no provisions for penalizing employers or bureaucrats who violate the provisions of the act. It is a statement of pious hope, rather than intent, which is in keeping with the foot-dragging of earlier governments.

The benefits provided in the act are much less valuable than those under previous labour laws, and the social security schemes listed in the act primarily repeat the existing government schemes. Most striking is a new criterion that was introduced, which mandates that benefits will be available only to those who are officially declared to be below the official poverty line.⁷⁶ Not only is the latter a political and arbitrary construct, as academics and activists have argued, it also excludes those who are malnourished due to a lack of employment.⁷⁷ Most domestic workers have joined this occupation precisely to move out of dire poverty and, if they succeed, will be excluded. Thus, it can act as a disincentive to engage in more employment that could move them beyond an unrealistically low poverty line.⁷⁸

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73. Kerala Artisan and Skilled Workers’ Welfare Fund. For details, see <<http://www.oit.org/public/english/dialogue/sector/papers/construction/wp219.pdf>> and <http://www.cds.edu/download_files/332.pdf>. *Maharashtra Domestic Workers Welfare Board Act*, 2008, Act no.1 of 2009, <http://www.wiego.org/informal_economy_law/india/content/Maharashtra_Domestic_Workers_Welfare_Board%20Act_2008.htm>; *Tamil Nadu Manual Workers Act [Regulation and Employment and Conditions of Work]*, 1982, Act no. 33, Subramanyam, Ravi, 2010: Tamil Nadu Civil and Criminal Court Manual Volume 7, Company Law Institute of India Private Limited, Chennai.
74. Rajni Palriwala and Neetha N., *India: Research Report 3: The Care Diamond: State Social Policy and the Market in India* (Geneva: UNRISD, 2009), UNRISD, <[http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=4177D0C917369239C1257566002EA0C7&parentdoctype=paper&netitpath=80256B3C005BCCF9/\(httpAuxPages\)/4177D0C917369239C1257566002EA0C7/\\$file/IndiaRR3.pdf](http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=4177D0C917369239C1257566002EA0C7&parentdoctype=paper&netitpath=80256B3C005BCCF9/(httpAuxPages)/4177D0C917369239C1257566002EA0C7/$file/IndiaRR3.pdf)>.
75. *Unorganized Workers Social Security Act*, Act no. 33 of 2008, 31 December 2008, <<http://india.gov.in/allimpfrms/allacts/2881.pdf>>.
76. Palriwala and Neetha, “Paid Care Workers,” *supra* first unnumbered note at 41.
77. Utsa Patnaik, “Theorizing Food Security and Poverty in the Era of Neo-Liberal Reforms” (2005) 33(7/8) *Social Scientist* 50.
78. Many more aspects of the 2008 *Unorganized Workers Social Security Act*, which cannot be detailed here, could be critiqued.

Rather than acting from a view of workers' rights and interests, the strongest legislative moves have been part of "social welfare" measures. Thus, child labour in domestic work has been banned, and special sanctions have been imposed on government employees who may employ them.⁷⁹ However, no regulation on conditions of work—hours of work, mandatory holidays, job security, trade union rights, minimum wages—have accompanied the social security bill. In other words, informal work, including domestic service, is not recognized as employment, and it is moot whether without the last any social welfare measures will succeed in improving working conditions. Finally, the specificity of paid workers who are women, as is the case for most domestic workers, has been ignored. Thus, even social welfare measures to deal with the problems of security, sexual harassment, proper accommodation for migrant women workers, and childcare facilities have received no attention. We are thus returned to another argument made at the start of this article, linking the lack of regulation of domestic work to the misrecognition, deliberate or otherwise, of the significance and problems of informal work, of the home as a place of work, and of women as workers.

The same factors perhaps underlie the continuing lack of laws to regulate placement agencies. A number of existing laws could be expanded to create such regulation. The 1979 *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act* prohibits the employment of inter-state migrant workers without registration by any establishment/contractor that employs five or more such workers.⁸⁰ It also specifies some benefits: non-discrimination in wage rates (by gender or in relation to local workers), holidays, hours of work, a non-refundable displacement allowance, a journey allowance, suitable residential accommodation, adequate medical facilities, and adequate protective clothing and equipment. Similarly, the 1970 *Contract Labour (Regulation and Abolition) Act* could be invoked to regulate placement agencies and the conditions of work in domestic service.⁸¹ A third possibility is the 1954 *Shops and Establishments Act*, although each state frames its own rules for this act.⁸² If it were made mandatory for all placement agencies to register under this act, they would have to maintain the records of all workers placed by them, including the details of the employers, the period of employment, wages and the mode of payment, the nature of work and the working hours, and a copy of the work contract. However, even in their present jurisdiction, each of these three laws is poorly implemented.

79. Sankaran, Sinha, and Madhav, *supra* note 4.

80. *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act* no. 30 of 1979, 11 June 1979, <http://pblabour.gov.in/pdf/acts_rules/inter-state_migrant_workmen_regulation_of_employment_and_co.pdf>.

81. *Contract Labour (Regulation and Abolition) Act*, Act no. 37 of 1970, 5 September 1970, <http://pblabour.gov.in/pdf/acts_rules/contract_labour_regulation_and_abolition_act_1970.pdf>.

82. The act for Delhi is *Delhi Shops and Establishments Act*, 1954, Act no. 7 of 1954, <<http://www.scribd.com/doc/16768087/delhishopsestablishmentsact-1954>>.

The National Commission for Women has attempted to address some of the concerns through the 2008 Domestic Workers (Registration, Social Security and Welfare) Bill, and it has held a few consultations.⁸³ The proposal includes a compulsory registration procedure for all domestic workers, both part-time and full-time, a welfare fund to which workers and employers will contribute, the registration of service providers (placement agencies), the regulation of working conditions, and fines and imprisonment for the violation of the provisions of the bill. Interestingly, it grants powers of inspection to any registered trade union.⁸⁴ A similar proposal has also been drafted by the National Campaign Committee for Unorganised Workers and Nirmala Niketan, which is entitled the 2008 Domestic Workers (Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill.⁸⁵ The debates and discussion around these bills include the definition of a domestic worker, an employer, and wages, the mode of delivery of welfare benefits, and the criteria for determining minimum wages, which neither bill expressly addresses. While many of the specificities of domestic work are factored in, issues of implementation, which must be examined in relation to other informal workers, have not been worked through.

Discussions abound, but progress in enacting or amending legislation is slow, reiterating the apathy of the state in providing legal protection to domestic workers. Added to the particulars of domestic work and employment and the reluctance to accept the home as a work place is the low priority attached to labour rights and welfare in the current policy paradigm.

Concluding Remarks

As indicated earlier, the problem of legislating on domestic workers is intertwined with issues pertaining to the regulation of the informal sector in India. The last is in conflict with the non-regulatory thrust of neo-liberal economic policies and the pressure against the regulation of informal workers exercised by the elite and the expanding numbers of “servant”-employing households. The complexity of work organization, wage rates, poor working conditions, poverty, illiteracy, caste, migrant status, lack of alternative work, and the exigencies of the life of domestic workers are similar to that of the vast numbers of informal workers. The success of social policy depends on the extent to which these workers’ rights are recognized rather than through piecemeal welfare measures.⁸⁶

83. See Domestic Workers (Registration Social, <http://ncw.nic.in/Comments/Domestic_worker_bill.pdf>. Palriwala and Neetha, “Paid Care Workers,” *supra* first unnumbered note at 41.

84. Sankaran, Sinha, and Madhav, *supra* note 4.

85. See <http://ncw.nic.in/Comments/Draft_Bill.pdf>.

86. The observation flows from the important pointer that “because work is such an integral part of life, all aspects of life are relevant to work.” Anne Morris and Thérèse O’Donnell, “Employment Law and Feminism,” in Morris and O’Donnell, *supra* note 13, 1 at 11.

An issue raised at the start of this article was that the recognition of the home as a workplace is a critical step in legislating the rights of domestic workers. The nature of informal enterprises in India, much of which are outsourced and home-based, also requires the recognition of the home as a workplace. It may be contended immediately that such a step is fundamentally at odds with the notion of the home as a private sphere. It also threatens the ideology of gendered familialism on which Indian social policy and its residual welfare regime rest.⁸⁷ Gendered familialism assumes voluntarily given love and nurture in the home and the presence of familial women undertaking the care of the young, old, and “working” members. The very presence of domestic workers who undertake this for pay and the legal recognition of domestic violence belie these ideas. Despite the plethora of feminist and other critiques of the idea of the home as a private and natural place of feminine labours and affect, these notions continue to be invoked. There is a refusal to place work at the centre of both the home and the outside—at the centre of being of both men and women. Perhaps because destabilizing the constructs of gendered familialism and the home/private/emotion equation does not only mean revaluing domestic labour, unpaid and paid, it also brings into question processes and values that are fundamental to the present social, economic, and political structures.

In conclusion, one can assert that rules and laws that recognize domestic workers as workers in the home, and that regulate their working conditions and pay, as well as the agents who mediate the worker-employer relationship, could have a fundamental impact on the conditions of work across the informal sector and the nature of social policy in India as well as on the valuation of women’s work and the gendered divisions in work, marriage, and the family.

87. Palriwala and Neetha, *supra* note 74 at 19-22.

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