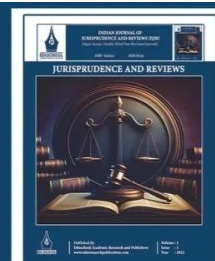




INDIAN JOURNAL OF JURISPRUDENCE AND REVIEWS (IJJR)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online: 3139-177X



Domestic Workers In India: Labour Rights, Human Rights And Statutory Exclusion

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Article Information

Received: 29th June 2026

Received in revised form: 3rd July 2026

Accepted: 1st August 2026

Available online: 2nd September 2026

Volume: 2

Issue: 3

DOI: <https://doi.org/10.63090/IJJR/3139.177X.0019>

Abstract

Paid domestic work sustains a large share of urban Indian households, yet the workers who perform it remain outside most of the statutory apparatus that Indian labour law builds around the employment relationship. This article examines why that exclusion has proved so durable and what would be required to end it. It traces the exclusion to three sources: a definition of the establishment that presumes a commercial workplace, an inspection model that cannot cross the threshold of a private dwelling, and a conception of the employer that dissolves when the household is the site of work. The article then tests the claim that a human rights framing rescues the position. It argues that the framing supplies a normative foundation and a set of international benchmarks, but that it converts into an enforceable claim only where the domestic statute supplies a registered employer, a wage floor, a record and a forum. The Code on Social Security 2020 is assessed against that test and found to advance registration while leaving financing and remedy incomplete. Comparative material from the Domestic Workers Convention and from state welfare board legislation is used to identify the design features that make the difference. The article concludes with reform proposals that place a registration obligation on the placement agency and the employing household, attach a wage floor through notification under minimum wage law, and create a district level forum with power to order payment.

Keywords:- Domestic Workers, Labour Law, Social Security, Human Rights, Informal Employment, India

I. INTRODUCTION

A household that employs a woman to cook, clean and mind children is an employer in every sense that matters to the person who does the work. Indian labour law has been reluctant to say so. The reluctance is not an oversight that survived into the present by inertia. It reflects a series of drafting choices, each defensible when it was made, whose combined effect is that several million workers perform waged labour in a legal space where the wage is not fixed, the hours are not limited, the termination is not regulated and the dispute has no obvious forum.

This article identifies the mechanism of that exclusion and asks what would displace it. Three questions organise the analysis. Which features of Indian labour legislation produce the exclusion, and are those features incidental or structural? Does the human rights framing that dominates advocacy in this field generate obligations a court can enforce, or does it operate mainly as a vocabulary of criticism? What would a workable statutory scheme look like, given that inspection of private dwellings is neither politically available nor, in most cases, constitutionally comfortable?

The argument proceeds from a distinction that is easy to lose. Recognition and regulation are different operations. A statute can recognise domestic workers by naming them in a definition clause without regulating the relationship in any way that changes what happens in a particular kitchen on a particular morning. Much of the Indian legislative record over the past two decades consists of recognition without regulation. The proposals advanced here are addressed to the second operation.

II. THE WORKFORCE AND THE DIFFICULTY OF COUNTING IT

Any argument about domestic work begins with a measurement problem that is itself a legal problem. Official estimates of the size of the workforce vary by a factor of several, because enumeration depends on whether the respondent household

describes the arrangement as employment. Where the work is performed by a relative, by a migrant lodged in the house, or by a woman who visits three households in a morning, the arrangement is frequently reported as something other than a job. Chen (2011) treats this as a conceptual failure rather than a survey failure, arguing that the categories used to count workers were built for enterprises and misdescribe work organised around a residence.

The measurement problem has direct legal consequences. Contribution based social insurance requires a known denominator. A welfare board requires a register. A minimum wage notification requires an occupational category against which a rate can be fixed. Where the state does not know how many workers there are, or where they are, every instrument that depends on enumeration operates at a fraction of its intended reach.

Neetha and Palriwala (2011) show that the difficulty is compounded by the structure of the work itself. Part time work spread across several employers is now the dominant form in Indian cities, displacing the live in arrangement that older literature treated as typical. That shift matters for law. A worker with one employer has a determinate counterparty. A worker with four employers, each of whom supplies a portion of the weekly wage, has no single respondent against whom a claim for unpaid wages, notice or severance can be framed.

III. THE PATTERN OF STATUTORY EXCLUSION

Indian labour statutes exclude domestic workers through three devices, and it is worth separating them because they call for different remedies.

The first is the definition of the establishment. The Factories Act 1948, the Shops and Establishments legislation of the states, and the Industrial Disputes Act 1947 all attach their obligations to a workplace defined by reference to trade, business or manufacture. A private residence is none of these. The exclusion here is definitional, and it would be cured by a definition.

The second is the inspection model. Indian labour enforcement has historically depended on an inspector with a power of entry. Article 21 of the Constitution, read with the privacy holding in *Justice K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, makes the unannounced entry of an inspector into a family home a considerably more sensitive proposition than entry into a warehouse. This exclusion is functional rather than definitional, and a definition will not cure it. It requires a different enforcement design.

The third is the identification of the employer. Sankaran (2011) observes that labour law was constructed around a bilateral relationship of some stability, and that its protective devices degrade as the relationship fragments. Domestic work is the extreme case. Where a worker serves several households, none of which regards itself as an employer, the statutory duty has no natural addressee.

Only the first of these is addressed by the drafting technique that Indian legislatures have most often used, which is to add domestic workers to a schedule. Shankar (2019) makes the point sharply in relation to entitlements. Inclusion in a schedule confers a status, and status without machinery leaves the worker where she was.

IV. WHAT THE SOCIAL SECURITY CODE CHANGED

The Code on Social Security 2020 consolidated nine earlier statutes and, for the first time in central legislation, built a registration architecture for unorganised workers that does not depend on the existence of an establishment. A worker may register on the strength of a self-declaration and an identity number. The Code contemplates schemes framed by the central and state governments covering life and disability cover, health and maternity benefit, old age protection and creche facilities.

Three features limit what the Code delivers. Registration and entitlement are not linked by the statute; registration creates a record, while the benefit arrives only if a scheme has been framed, funded and notified, and the Code imposes no timetable on that step. Financing is left open, since the Code permits contributions from the central government, state governments, aggregators and beneficiaries but identifies, for domestic work, no contributor with both the capacity and the obligation to pay. There is also no dedicated forum. A worker who registers and receives nothing has no remedy within the Code that is quicker or cheaper than a writ petition.

The contrast with the construction sector is instructive. Building and construction workers have had a dedicated statute since 1996 and a dedicated financing device in the cess levied on the cost of construction. That financing device is what distinguishes the scheme from the general run of welfare legislation, and the absence of an equivalent for domestic work is the largest gap in the present architecture. Studying implementation in Kozhikode district in Kerala, K (2026) finds that the distance between an entitlement on paper and a benefit in the hand is governed less by the strength of the right than by the presence of an office, a register and a person answerable for the payment. That finding should discipline expectations about what a further round of central legislation can achieve on its own.

V. THE HUMAN RIGHTS FRAMING AND ITS LEGAL PURCHASE

Advocacy in this field is conducted largely in the language of human rights. Rao and T (2026) argue that labour rights in the unorganised sector should be understood as human rights, and that reframing them in that way changes both the standard of justification the state owes and the range of institutions that can be asked to intervene. The argument has force, and it is worth stating precisely what it does and does not accomplish.

What it accomplishes is threefold. It supplies a normative floor that does not depend on the worker's classification, which matters where classification is the instrument of exclusion. It brings into play the reporting machinery of the international covenants and of the national human rights institution, a route that Murthy (2019) documents in detail. It creates an interpretive resource for courts, since Indian constitutional adjudication has repeatedly read international standards into Articles 14, 19 and 21 where the domestic statute is silent or ambiguous.

What it does not accomplish is the conversion of a normative claim into an enforceable one. A human right against a household is not self executing. Someone must fix the wage, record the engagement, receive the complaint and order the payment. Tomei (2011) puts the point in the language of decent work. The standard is achievable, but only through the ordinary

instruments of labour administration, and the international standard is a specification for those instruments rather than a substitute for them. The framing is therefore best understood as a direction to the legislature, not as a shortcut around it.

VI. CONVENTION 189 AND THE STANDARD INDIA HAS NOT RATIFIED

The Domestic Workers Convention adopted by the International Labour Organization in 2011 sets out obligations that map closely onto the gaps identified above. It requires written particulars of employment, limits on hours, weekly rest of at least twenty four consecutive hours, coverage by minimum wage machinery where such machinery exists, and access to dispute resolution on terms no less favourable than those available to other workers. It also addresses the placement agency, requiring states to regulate the intermediary that recruits and places workers.

India has not ratified the Convention. The decade following its adoption produced substantial ratification elsewhere and a measurable increase in national legislation, as the International Labour Organization (2021) records in its review of progress. The absence of ratification is not, by itself, decisive, since ratification obliges a state to give effect to a standard it has always been free to adopt. The more useful reading of the Convention for present purposes is as a drafting template, and its most transferable feature is the treatment of the placement agency as a regulated intermediary carrying obligations of its own.

VII. CRIMINAL LAW, HARASSMENT AND THE LIMITS OF THE PENAL ROUTE

Where labour law has been absent, the criminal law has been asked to fill the space. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 expressly includes a dwelling place or house within its definition of workplace, and provides a Local Committee at district level for complaints against employers who are not covered by an internal committee. This is one of the few Indian statutes that confronts the private residence directly, and its drafting deserves attention as a precedent.

Provisions on trafficking, bonded labour and offences against children have also been used, and their availability reflects the seriousness of the worst cases. Their limits are equally clear. The penal route addresses the exceptional case and leaves the ordinary one untouched. A worker underpaid by two hundred rupees a month, dismissed without notice after nine years, or required to work on a declared holiday, has suffered a wrong that no criminal court will hear. Breman (1996) described this pattern across the informal economy, and returned to it during the pandemic, when the categories of worker least visible to labour administration proved also to be those least reachable by relief (Breman, 2020).

VIII. STATE LEGISLATION AND THE WELFARE BOARD MODEL

Several states have brought domestic workers within welfare board legislation for unorganised workers, and a smaller number have issued minimum wage notifications covering domestic work as a scheduled employment. The welfare board model has a real advantage. It creates an office with a register, a budget and a person who can be asked why a payment has not been made. Paliwala and Neetha (2010) show, in a comparison with anganwadi workers, that the presence of an identifiable public counterparty changes what workers are able to claim, even where formal legal status remains ambiguous.

The model also has a characteristic weakness. Boards are financed from general revenue supplemented by nominal worker contributions, which makes benefit levels a function of annual budget decisions rather than of an accrued entitlement. Where the board is not funded, registration produces an identity card and nothing else. Agarwal (1997) supplies the analytical reason to care about the difference. A woman's bargaining position within and beyond the household depends on the strength of her outside option, and an entitlement that may or may not be paid is a weak outside option.

IX. ELEMENTS OF A WORKABLE STATUTE

Five elements would move the position from recognition to regulation.

Registration should attach to the engagement rather than to the worker alone. A household that engages a worker for more than a stated number of hours in a month, and any agency that places a worker, should be required to record the engagement in a state register. The obligation is light, and it supplies the denominator that every subsequent instrument needs.

A wage floor should be fixed by notification under minimum wage machinery in every state, expressed per hour as well as per month, so that the multiple employer arrangement can be priced. Where a worker serves four households, each engagement is separately measurable only if the rate is stated in units of time.

Financing should be identified rather than left to appropriation. The construction cess shows that a dedicated levy can be sustained over decades. For domestic work the plausible contributor is the placement agency in the case of placed workers, and a modest employer contribution collected alongside an existing municipal payment in the case of direct engagements.

Enforcement should be complaint led rather than inspection led. This is the point at which the privacy objection must be met rather than avoided. A district authority with power to summon an employer, examine the register and order payment of a computed sum, subject to appeal, achieves most of what an inspectorate would achieve without a general power of entry into homes.

Termination should attract a short statutory notice period and a modest severance calculated on length of service. The absence of any notice requirement is what converts a wage dispute into a total loss of livelihood, and it is the provision most often missing from state legislation.

X. CONCLUSION

The exclusion of domestic workers from Indian labour law is not a single gap that a single amendment can close. It is the joint product of a definition built for enterprises, an enforcement model built for premises that can be entered, and a

protective structure built for a stable bilateral relationship. Each requires a different response, and only the first is addressed by adding a category to a schedule.

The human rights framing advanced by Rao and T (2026) is correct as a matter of principle and useful as a source of standards, but it does not do the work a statute must do. What converts the principle into a payment is administrative: a register, a rate, a fund and a forum. Evidence from district level implementation points the same way (K, 2026). Indian law has the drafting precedents it needs, in the 2013 harassment statute for the private dwelling, in the construction legislation for dedicated financing, and in the Domestic Workers Convention for the regulation of intermediaries. The task is one of assembly rather than invention.

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