

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (C) NO. _____ OF 2018

[A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA SEEKING COURT DIRECTIONS FOR ENSURING RIGHT TO DIGNITY OF LIFE UNDER ARTICLE 21 OF THE CONSTITUTION AND HUMANE WORKING CONDITIONS FOR DOMESTIC WORKERS]

IN THE MATTER OF:

COMMON CAUSE & ORS.

...PETITIONERS

VERSUS

UNION OF INDIA

...RESPONDENT

PAPER BOOK

(FOR INDEX, PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONERS: PALLAV MONGIA

RECORD OF PROCEEDINGS

S.NO.	DATE OF RECORD OF PROCEEDINGS	PAGES
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PROFORMA FOR FIRST LISTING

SECTION-

The case pertains to (Please tick/check the correct Box):

- Central Act: Minimum Wages Act, 1948
- Section: Section 3, Section 5
- Central Rule: **N/A**
- Rules: **N/A**
- State Act: **N/A**
- Section: **N/A**
- State Rule: **N/A**
- Rule No(s): **N/A**
- Impugned Final Order: **N/A**
- Impugned Final Order/Decree: **N/A**
- High Court: **N/A**
- Names of Judges: **N/A**
- Tribunal/Authority: **N/A**

-
1. Nature of Matter:
 2. (a) Petitioner No. 1: Common Cause
 - (b) E-mail ID:
 - (c) Mobile phone number:
 - (a) Petitioner No. 2: National Platform for Domestic Workers
 - (b) E-mail ID: N/A
 - (c) Mobile phone number: N/A
 - (a) Petitioner No. 3: Aruna Roy
 - (b) E-mail ID: N/A
 - (c) Mobile phone number: N/A
 3. (a) Respondent: Union of India
 - E-mail ID: **N/A**
 - Mobile phone number: **N/A**

4. (a) Main category classification: _____
(b) Sub classification: _____
5. Not to be listed before: Hon'ble Justice L. Nageswara Rao
6. (a) Similar disposed of matter with citation: **N/A**
(b) Similar/Pending matter: *Shramjeevi Mahila Samiti v. State of NCT of Delhi*, SLP (CrI) No. 150 of 2012
7. Criminal Matters: **N/A**
(a) Whether accused/convict has surrendered: Yes/ No
(b) FIR No. _____ Date: _____
(c) Police Station _____
(d) Sentence Awarded: _____
(e) Sentence Undergone: _____
8. Land Acquisition Matters: **N/A**
(a) Date of Section 4 notification: _____
(b) Date of Section 6 notification: _____
(c) Date of Section 17 notification: _____
9. Tax Matters: State the tax effect: **N/A**
10. Special Category (first petitioner/appellant only): **N/A**
Senior citizen > 65 years SC/ST
Woman/child Disabled Legal Aid case
In custody
11. Vehicle Number (in case of Motor Accident Claim matters): **N/A**
12. Decided cases with citation: **N/A**

Date: __.11.2018

ADVOCATE FOR THE PETITIONERS
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SYNOPSIS

This Writ Petition in the nature of a Public Interest Litigation under Article 32 of the Constitution of India has been filed before this Hon'ble Court to urgently intervene and acknowledge domestic help as a "service for pay", lay down guidelines for protection of human rights of domestic workers and issue appropriate writ, order or direction to the Respondent to take measures to ameliorate their condition by inter alia notification of minimum wages, compulsory weekly and annual paid leaves, extension of maternity leave benefits, collective bargaining through organized legal unions, first response complaints authority and extending socio economic rights of pension and healthcare as provided to the workers of organized sector

The Petitioners are conscious of the case of *Shramjeevi Mahila Samiti v. State of NCT of Delhi*, SLP (CrI) No. 150 of 2012, wherein the abysmal situation with regard to the implementation of the various provisions within the Unorganised Workers Social Security Act, 2008 were brought to light. The Supreme Court starting with NCT of Delhi had directed a pilot project to be implemented wherein all domestic workers would be registered which includes issuance of identity cards and extension of all benefits as enumerated in the Act. The Supreme Court also directed that till the point these directions were not complied with the requisite state governments were not to be granted any further funds as laid down in the Act. In a recent order of the Hon'ble Supreme Court, a two judge Bench directed the Chief Secretaries of all the States and Administrators of all the Union Territories to start registering 10% of the estimated number of workers every month starting from the month of January, 2019.

However, while the above registration will help the domestic workers access maternity, pension and other benefits under the Unorganised Workers Social Security Act, 2008, it will not enable the workers to demand for fair conditions of work such

as payment of minimum wages, weekly rest, etc., which have been recognised by various countries and international conventions. Hence, the present writ petition.

LIST OF DATES

DATE	EVENT
31.12.2008	The Unorganised Workers Social Security Act, 2008 was enacted by the Central Government
4.1.2012	This Hon'ble Court issued notice in <i>Shramjeevi Mahila Samiti v. State of NCT of Delhi</i> , SLP (CrI) No. 150 of 2012
13.6.2017	Government of India ratified two fundamental ILO Conventions concerning the elimination of child labour, the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182)
21.8.2018	This Hon'ble Court in <i>Shramjeevi Mahila Samiti v. State of NCT of Delhi</i> , SLP (CrI) No. 150 of 2012 directed Chief Secretaries of all the States and Administrators of all the Union Territories to start registering 10% of the estimated number of workers every month starting from the month of January, 2019

IN THE SUPREME COURT OF INDIA
(EXTRAORDINARY CIVIL JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2018

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA SEEKING COURT DIRECTIONS FOR ENSURING RIGHT TO DIGNITY OF LIFE UNDER ARTICLE 21 OF THE CONSTITUTION AND HUMANE WORKING CONDITIONS FOR DOMESTIC WORKERS.

MEMO OF PARTIES

IN THE MATTER OF PUBLIC INTEREST LITIGATION:

1. Common Cause
(A registered society)
Through its Director
5, Institutional Area
Nelson Mandela Road
Vasant Kunj, New Delhi-110070
Email: commoncauseindia@gmail.com
Ph: 9818399055

2. National Platform for Domestic Workers
B19, Shubhavna Niketan,
Pitampura, New Delhi – 110034
Email: npdomesticworker@gmail.com
Ph: 9810810365

3. Aruna Roy
Mazdoor Kisan Shakti Sangathan
Village Devdungri
Post Brar, District Rajasmand
Rajasthan – 313341
Email:
Ph:

...PETITIONERS

VERSUS

Union of India
Through Ministry of Employment and Labour
Shastri Bhavan,
New Delhi 110001

...RESPONDENT

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE
HON'BLE SUPREME COURT OF INDIA

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners herein are filing the instant writ petition in public interest under Article 32 & 139 of the Constitution of India. The Petitioners through the instant writ petition are seeking the urgent intervention of this Hon'ble Court to protect and safeguard the rights and livelihood with dignity as needs to be secured under Article 21 of the Constitution of the over 4.2 million people working as domestic help in the unorganized economy.

ABOUT THE PETITIONERS

2. That Petitioner No. 1, Common Cause, is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a bona fide public interest organization fighting for an accountable, transparent and corruption-free system. Dr. Vipul Mudgal, Director of Common Cause is authorized to file this PIL. The requisite Certificate & Authority Letter are filed with the vakalatnama. The average annual income of the Petitioner Society for the last three financial years is approximately Rs.1.36 crores. (PAN Number: AAATC0310K) The Society does not have a UID number. The petitioner society has the means to pay if any cost is imposed by the Hon'ble Court.
3. That Petitioner No. 2, National Platform for Domestic Workers (NPDW), was created in 2012 and is a platform of 36 national and regional domestic workers' unions and member based organizations from around the country that are demanding Comprehensive Legislation for Domestic Workers. NPDW has held signature campaigns, public meetings and hearings along with advocacy with

lawmakers demanding ratification of ILO Convention 189 and a comprehensive legislation for domestic workers. Ms Elizabeth Khumallambam, Representative of the National Platform for Domestic Workers is authorised to file this PIL.

4. That Petitioner No. 3, Aruna Roy is a social activist, well known for spearheading the Right to Information campaign. She is a founding members of the Mazdoor Kisan Shakti Sangathan (MKSS) and National Campaign for Peoples' Right to Information (NCPRI). A former civil servant who resigned from the Indian Administrative Service, she served as a member of the National Advisory Council (NAC) from 2004 to 2006. In 2000, she received the Ramon Magsaysay Award for Community Leadership. In 2010 she received the Lal Bahadur Shastri National Award for Excellence in Public Administration, Academia and Management. In 2011, she was named as one of the hundred most influential people in the world by Time magazine. In September, 2017, India Times listed Roy as one of the 11 'Human Rights Activists Whose Life Mission Is to Provide Others with a Dignified Life'. Aruna Roy woks for the empowerment of the vulnerable, including unorganised and domestic workers. **The approximate annual income of the Petitioner No. 3 is Rs. _____** (PAN Number: ARTPR0544C) **(UIDAI: _____)**
5. The Petitioners have no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the Petitioners, which has or could have a legal nexus with the issues involved in the present PIL. The expenses/costs for the present petition are being born by the Petitioners themselves.
6. The instant writ petition is based on the information/documents which are in public domain.

THE CASE IN BRIEF

7. That the lamentable condition of domestic workers is evident from the recent case of a 16-year-old worker from Jharkhand who was hacked to pieces and her body was disposed of in the drain after she demanded her wages from the agent. This news, published in leading national newspapers on May 21, 2018, is a case of abuse, violation of Article 21, violation of dignity in work, trafficking, and amounts to bonded and forced labour, besides one of cold-blooded murder. Details of the case regarding 16-year-old worker from Jharkhand are given in **Annexure P1.** (Pg. _____ to _____)
8. It may be pointed out that this was not an isolated incident and cases of torture, abuse and harassment of a domestic worker and denial of her basic rights as a citizen of the country are numerous.
9. That the number of domestic workers in India is disputed ranging from 4.75 million (Employment and unemployment Survey by National Sample Survey Organisation, 61st round, 2004-05) to 90 million (Estimated by the Task Force Report, 2011). This vast gap itself indicates the invisibility of this class of workers and that their services are considered an extension of household chores.
10. A report released by the International Labour Organisation (“**ILO**”) in 2015 estimated 67.1 million domestic workers in the world, with the sector growing by almost 20 million during 1995-2010 and accounting for 1.7% of the global employment. The Asia-Pacific region alone accounted for 21.5 million of the global estimate, a substantial increase from 153.5 million in 1995. A copy of the Report titled “ILO Global Estimates on Migrant Workers” released in 2015 is annexed herewith and marked as **Annexure P2.** (Pg. _____ to _____)
11. That according to data, Indian homes have witnessed a 120% increase in domestic workers in the decade post liberalisation. While the figure was 7,40,000 in 1991, it has increased to 16.6 lakh in 2001. Today, it has become a norm for a family to depend on a maid. According to data provided by Delhi Labour

Organisation, there are over five crore domestic workers in India most of whom are women.

12. That as recognised by the 2nd National Commission on Labour Report, chaired by Shri Ravindra Verma, a predominant majority of those engaged in domestic work are women. According to an estimate of the College of Social Work, Mumbai, 80% domestic workers are women. A copy of the report of the 2nd National Commission on Labour is annexed herewith and marked as **Annexure P3**. (Pg._____to_____)
13. That in view of the fact that a majority of these female workers are denied the right to dignified work including *inter alia* the payment of minimum hourly wages, weekly and annual paid leaves, notice and one month's salary in lieu of notice of termination, it is tantamount to violation of Article 14, Article 15 and Article 21 of the Constitution of India.
14. On June 13, 2017, the Government of India ratified two fundamental ILO Conventions concerning the elimination of child labour, the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). Convention 138, requires party States to set a minimum age under which no one shall be admitted to employment or work in any occupation, except for light work and artistic performances. Convention 182 calls for the prohibition and elimination of the worst forms of child labour, including slavery, forced labour and trafficking; the use of children in armed conflict; the use of a child for prostitution, pornography and in illicit activities (such as drug trafficking) and hazardous work. While the total number of working children in the age group of 5-14 years has gone down from 1,26,66,377 as per Census 2001 to 43,53,247 as per Census 2011, the data is still terrifying.
15. As per the data released by the Ministry of Women and Child Development in February 2014, published in response to a question tabled in the Rajya Sabha, overall, in India's 28 states and 7 union territories, there were 3,564 cases of

alleged violence against domestic workers reported in 2012, an increase from 3,517 in 2011 and 3,422 in 2010.

16. The 2009 National Commission for Enterprises in the Unorganised Sector (NCEUS) report estimates that an overwhelming proportion of workers belonging to the poor and vulnerable groups (between 94% and 98%) are informal workers, while they constitute a much smaller proportion of the work force in the middle or higher income groups. The survey notes domestic work as one of the 15 most dominant occupations of the poor.
17. The Hashim Committee Report on Methodologies for Identifying Families living Below Poverty Lines in Urban Areas submitted to the Planning Commission in 2012 explicitly identified domestic work as occupationally vulnerable. A copy of the Hashim Committee Report on Methodologies for Identifying Families living Below Poverty Lines in Urban is Areas annexed herewith and marked as **Annexure P4.** (Pg. _____ to _____)
18. On May 4, 1886 in Chicago, US, workers protested against unfair working conditions and demanded the right to "*the eight-hour day*". Several protestors died and around 200 wounded. As a consequence of this protest, workers in US were granted the basic rights of eight-hour work shifts and weekly rests, thereby commemorating May 1 as International Workers' Day. It is a tragedy that after more than 132 years of this incident, India has failed to provide these basic rights to domestic workers who constitute a significant portion of the workforce in India.
19. The Global Slavery Index 2016 released by the Walk Free Foundation working toward eliminating all forms of modern slavery succinctly notes that "informal nature of much of India's labour economy also impacts on vulnerability. According to government statistics, some 75 percent of rural workers and 69 percent of urban workers are in the informal economy...Vulnerability to slavery in India has some common elements, with poverty and the lack of capacity to

absorb shocks, and deep structural inequalities reflecting gender, caste and tribe all being highly relevant.” A copy of extracts of the Global Slavery Index, 2016 is annexed herewith and marked as **Annexure P5**. (Pg._____to_____)

20. Domestic workers fall among India’s invisible workforce working in the informal sector. Latent classism and lack of education makes domestic workers prone to violence and abuse at the hands of the employers and placement agencies. Absence of proper documentation adds to their vulnerability, increasing the reliance on the employer to access social security benefits. As employment is largely through word of mouth, personal referrals or other informal media, employment contracts are rarely negotiated, leaving the terms of employment to the whims of the employee. Absence of written terms also leaves domestic workers vulnerable to arbitrary dismissal, wage deductions for accidental damage to property, evictions without notice, withholding of wages and other exploitative labour practices.
21. Domestic workers also lack the horizontal mobility to change place of work as well as vertical mobility in terms of progress in profile/ compensation due to lack of value addition to skill. We often see children being indiscriminately employed as nannies or child-minders. As there is no retirement age or pensionary benefits associated with employment, domestic workers are discarded and left to fend for themselves on meagre BPL or old age pensions if accessible in the state, if disease or age makes them unsuitable or inefficient for household work.
22. Despite the strength of the workforce and indispensability of their work to the urban economy, this class of work barely gets recognition as labour and those working rarely get the rights ordinarily available to other classes of workers. In fact, domestic workers were identified as ‘forced labour’ in the 2016 Walk Free Foundation state surveys as stated in the Global Slavery Report 2016.
23. Given that they suffer social prejudices over and above the economic hardships due to the nature of workplace, the lack of negotiating power and the non-

worker identity, a comprehensive set of affirmative guidelines is imperative to secure them a life of dignity and economic identity.

24. The Petitioners submit that it is deplorable that even after seven decades of independence, a vast majority of India's people working as "house help" are employed under exploitative, abusive and slave like conditions, with rare acknowledgement of their services as "real work". It is a stark manifestation of nothing less than Modern Day Slavery and we cannot exist in denial anymore.
25. The Petitioner No. 1 had made a representation to the Hon'ble Prime Minister Narendra Modi and the Hon'ble Minister of Labour and Employment, Mr. Bandaru Dattatreya in September 2016, bringing to their notice the plight of millions of domestic workers in the country and seeking urgent intervention by the Parliament. A copy of the representation made by the Petitioner No. 1 to the Hon'ble Prime Minister Narendra Modi and the Hon'ble Minister of Labour and Employment, Mr. Bandaru Dattatreya in September 2016 is annexed herewith and marked as **Annexure P6**. (Pg. _____ to _____)
26. Sadly, even with the piecemeal social service schemes by the reigning government, we are reprehensibly far from a comprehensive acknowledgment of their fundamental human rights. Even the National Policy on Protection of Domestic Workers which was put under consideration of the government in 2015 is yet to concretize even after a lapse of three years.
27. In response to a question put up in the Lok Sabha by Shri Varun Feroze Gandhi on 12 March 2018, on whether the Government has enacted or proposed to enact to safeguard the interests of female domestic workers and provide them with social security and other benefits, Shri Santosh Kumar Gangwar, Minister of State for Labour and Employment had replied thus:

"(a) to (c): Discussion are underway regarding a National Policy for Domestic Workers, including women with the aim to protect the domestic worker including women from abuse harassment violence and guarantee them rights in the matter of social security and minimum wages. Besides, the Unorganized

Workers' Social Security Act, 2008 has been enacted to provide social security relating to life and disability cover, health and maternity benefits, old age protection to the unorganized workers including female domestic workers. Various Ministries/Departments of the Central Government are implementing such social security schemes like Indira Gandhi National Old Age Pension Scheme (Ministry of Rural Development); National Family Benefit Scheme (Ministry of Rural Development); and maternity and health benefit Schemes (Ministry of Health and Family Welfare). In addition, the Central Government has recently converged the social security schemes of Aam Aadmi Bima Yojana (AABY) with Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) and Pradhan Mantri Suraksha Bima Yojana (PMSBY) to provide life and disability coverage to the unorganised workers including domestic workers for the age group of 18 to 50 years depending upon their eligibility. PMJJBY gives coverage of Rs. 2/- lakhs on death at premium of Rs. 330/- per annum while PMSBY gives coverage of Rs. 2/- lakhs on accidental death besides disability benefits as per scheme at premium of Rs. 12/- per annum. These converged schemes are being implemented by Life Insurance Corporation of India. The annual premium is shared on 50:50 basis by the Central Government and the State Governments/State Nodal agencies. The benefits of these schemes are also available to female domestic workers."

A copy of the response of Shri Santosh Kumar Gangwar, Minister of State for Labour and Employment in the Parliament is annexed herewith and marked as **Annexure P7.** (Pg. _____ to _____)

28. It is respectfully submitted that while some of these schemes have been made available to domestic workers, a National Policy would be inadequate in so far as guaranteeing justiciable rights of employment and life with dignity.
29. It is further respectfully submitted that there exists a legislative vacuum with regards to the rights of domestic workers who form a major section of the workforce of the country. Domestic work is an integral part of the economy and an acknowledgement as gainful and organized employment will contribute to an increase in the GDP.
30. It is respectfully submitted that domestic workers form a sizeable portion of the population, with more than 4.2 million men, women and children working as cooks, cleaners, drivers, gardeners and caregivers across the country according

to Employment-Unemployment Survey (EUS) of NSSO, 2011. They are not organized formally through trade unions to fight for their rights at a national level.

31. The Petitioners are therefore, praying for the Hon'ble Supreme Court to urgently intervene and acknowledge domestic help as a "service for pay", lay down guidelines for protection of human rights of domestic workers and issue appropriate writ, order or direction to the Respondent to take measures to ameliorate their condition by inter alia notification of minimum wages, compulsory weekly and annual paid leaves, extension of maternity leave benefits, collective bargaining through organized legal unions, first response complaints authority and extending socio economic rights of pension and healthcare as provided to the workers of organized sector.

CONSTITUTIONAL RIGHTS

32. **Right to livelihood:** The Constitution of India, under Article 21 guarantees to its citizens the protection of life and personal liberty. It states:

"21. Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law."

The Supreme Court in the landmark case of *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180, included the right to livelihood under the ambit of Article 21 and held:

"...the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean, merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life an equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood."

In another landmark case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746, this Hon'ble Court held that,

"...the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter etc."

33. **Right to gender equality:** Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It states that:

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth-

(1) The State shall not discriminate against any citizen on only of religion, race, caste, sex, place of birth or any of them."

In the case of *Vishaka & others v. State of Rajasthan*, AIR 1997 SC 3011, this Hon'ble Court held:

"10. Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose."

34. **Right against Exploitation:** The Constitution of India, under Article 23(1) guarantees its citizens the Right against Exploitation, not just from State but also against private parties. It states:

"23. (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."

The Supreme Court in the landmark case of *PUCL v. Union of India*, AIR 1982 SC 1473, has categorically observed that

"Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is

contrary to basic human values. To contend that exacting labour by passing some remuneration, though it be inadequate will not attract the provisions of Article 23 is to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23.

The Constitution makers did not intend to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour."

(emphasis supplied)

The Court, taking a step forward, also recognized work for remuneration below minimum wages as 'forced work'. It observed:

"The word 'force' must therefore be construed to include not only physical or legal force but force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage...We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour'"

As this Fundamental Right is enforceable not just against the State but also private parties, Justice Bhagwati speaking on behalf of the three judge Bench also observed that:

"Wherever any fundamental right which is enforceable against private individuals such as, for example, a fundamental right enacted in Article 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. The fact that the person whose fundamental right is violated can always approach the court for the purpose of enforcement of his fundamental right, cannot

absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him.”

Therefore, the Respondent is under a Constitutional obligation to ameliorate the plight of domestic workers by bringing in adequate legal safeguards for minimum wages, economic empowerment and decent working conditions for the domestic workers.

35. Directive Principles towards adequate means of livelihood and economic empowerment: The Directive Principles enshrined under Article 39, 41, 42 and 43 of the Constitution require that the state policy be as such that it secures for all adequate means of livelihood and a life of dignity. Under Article 39, the State has to direct its public policy to ensure that:

“(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

36. Similarly, Article 41 requires that,

“41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”

37. Article 42 directs the State to “make provision for securing just and humane conditions of work and for maternity relief”

38. Article 43 pushes the obligations of the State beyond securing “floor wages” or “minimum wages” to take steps for ensuring a ‘living wage’ and a ‘decent standard of life’:

“43. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.”

39. The responsibility to bring in legal and otherwise measures to fulfill the aspirational guidelines under Articles 29-43 lies equally on central and state governments, corresponding to entries 22, 23 and 24 under the Concurrent List of Schedule VII of the Constitution.

40. The Apex Court in *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802, read Article 21 and 23 with Directive Principles enshrined under Articles 39(3), 39 (f), 41 and 42 to observe:

“This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in

conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

(emphasis supplied)

41. In *P. Sivaswamy v. State of Andhra Pradesh*, AIR 1988 SC 1868, the Supreme Court observed in connection with bonded labour that:

“Article 42 of the Constitution makes it the obligation of the State to make provision for securing just and human conditions of work. There are several other Articles in Part IV of the Constitution which indicate that it is the State's obligation to create social atmosphere befitting human dignity for citizens to live in.”

42. Therefore, the Directive Principles under the aforementioned articles read with the Fundamental Rights guaranteed under Articles 14, 19, 21 and 23 obligate the Respondent to institute a system of economic empowerment for domestic workers by acknowledging their work as gainful employment and providing protections and incentives as is available to the organized labour force in the country.

PRESENT LEGAL FRAMEWORK

43. The **Child Labour (Prohibition and Regulation) Act 1986, amended in 2016**, categorically proscribes employment of children under fourteen years unless in a non-hazardous family enterprise, as an artist or audio-visual entertainment industry, outside school hours and with due safety. This Act does not include domestic workers within its framework. The amended Act imposes a complete prohibition on employment of children below the age of 14 years in any establishment, whether hazardous or not. For adolescents between ages 14

and 18, however, the amended Act only prohibits employment in hazardous industries.

44. However, there have been legislative actions at Center & State level to counter this across industries. Under Section 27 (A) of the Maharashtra State Public Service Conduct Act, 1997, the Maharashtra government prohibits government employees from employing children below 14 as domestic workers. Such rules can also be found in the rule books of 18 other states. The All India (Conduct) Rules, 1968 have also been amended to prohibit any government employee from employing a child below the age of 14 years. Despite these rules, employment of minor as domestic workers is regular practice in Indian households.
45. The **Unorganised Workers' Social Security Act, 2008** that provides for welfare schemes for wage earners engaged in the unorganized sector of the economy, it technically includes domestic workers under Section 2(b) which defines "home-based workers" as:

"home-based worker" means a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs"

46. In December 2016, in response to a question raised in the Rajya Sabha, the Hon'ble Labour Minister Mr. Bandaru Dattatreya stated that the Government had enacted this Act in order to provide social security benefits to the unorganized sector, which included domestic workers. According to him, various schemes, formulated by the Government to provide social security cover to the unorganized workers, listed in the Schedule I of the above Act included:

- a) Indira Gandhi National Old Age Pension Scheme (Ministry of Rural Development)

- b) National Family Benefit Scheme (Ministry of Rural Development)
- c) Janani Suraksha Yojana (Ministry of Health and Family Welfare)
- d) Handloom Weavers' Comprehensive Welfare Scheme (Ministry of Textiles)
- e) Handicraft Artisans' Comprehensive Welfare Scheme (Ministry of Textiles)
- f) Pension to Master Craft Persons (Ministry of Textiles)
- g) National Scheme for Welfare of Fishermen and Training and Extension (Department of Animal Husbandry, Dairying & Fisheries)
- h) Aam Aadmi Bima Yojana (Department of Financial Services)
- i) Rashtriya Swasthya Bima Yojana (Ministry of Health and Family Welfare)
- j) Atal Pension Yojana
- k) Pradhan Mantri Jeevan Jyoti Bima Yojana, and
- l) Pradhan Mantri Suraksha Bima Yojana

47. It is respectfully submitted that while some of the schemes have been made available to domestic workers, the Act is inadequate in so far as guaranteeing justiciable basic livelihood rights of *inter alia* adequate pay, paid leaves, rightful employment and termination are concerned.

48. Additionally, the protections provided are piecemeal and through notifications by the Governments. They are executive in nature and not a matter of statutory

right to ensure their protection in perpetuity. Thus, making it overly reliant on the entities responsible for implementation. This was an aspect which this Court also took cognizance of this issue in the case of *National Domestic Workers Welfare Trust v. Union of India*, WP (C) No. 2810 of 2012. This case was instituted because of the failure to implement various schemes under the Unorganized Workers' Social Security Act, 2008.

49. It is further submitted that the multiple window mechanisms, in absence of a nodal welfare authority for domestic workers, subjects them to the systematic ailments of the legal scheme of the Act. Domestic workers, with inadequate to non-existent right to leaves, and whimsical employment and termination practices may not find it possible to avail these benefits under various social welfare schemes unless provided institutional support by a nodal agency.
50. The **Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979** also offers limited protection of individuals who migrate to cities to work as domestic workers in government or private commercial establishments who engage 5 or more than 5 migrant workers. It however excludes from protection millions of domestic workers who migrate to different states to work in households.
51. **The Sexual Harassment of Women at the Workplace (Prevention and Prohibition) Act, 2013** brings women engaged in domestic work into the ambit of prosecution for sexual harassment. This law, though strict on paper, has failed to offer sufficient protection to domestic workers since its enactment in 2013. Being in the private sphere and lack of employment security makes domestic workers vulnerable to such abuse. It is difficult for them to report such cases as in absence of an HR structure, it would have to be reported as a criminal case. This not only puts their employment in jeopardy but also makes it a question of their word against the employers as there would be hardly non-partisan and sympathetic witnesses inside private homes. Copies of news reports on cases of

sexual abuse reported by domestic workers are annexed herewith and marked as **Annexure P8**. (Pg. _____ to _____)

52. **The Central Civil Services (Conduct) Rules, 1964** prohibit any government official/civil servants from employing children below the age of 14 years as domestic workers.
53. Some states have also progressively set up welfare boards for protection of rights of domestic workers. For instance, **the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982** which constitutes the Tamil Nadu Domestic Welfare Board, the **Maharashtra Domestic Workers Welfare Board Act, 2008** that provides for the setting up of a District Domestic Labour Welfare Board with a wide range of functions including the registration of workers as beneficiaries; the distribution of benefits to registered workers in the event of an accident; education finances for children; medical assistance in case of ailments of the beneficiary or her dependents; maternity benefits restricted to two children and funeral expenses in case of death of a beneficiary.
54. **The Minimum Wages Act, 1947** is not applicable to domestic workers *ipso facto* but states have an option of extending its application. So far, domestic workers have been brought under the ambit of this act by Tamil Nadu, Kerala, Bihar, Jharkhand, Gujarat, Orissa, Karnataka and Rajasthan. However, only a few of these states, like Rajasthan, Kerala have notified the minimum wages per month and the number of working hours. Domestic workers have not been included in the Schedule of the Central Notification dated 19 January 2017 under the Minimum Wages Act, 1947.
55. Domestic workers are also not included in the protective ambit of Payment of Wages Act, 1936, the Workmen's Compensation Act, 1923, the Contract Labour (Regulation and Abolition) Act, 1970 or the Maternity Benefit Act, 1961, although

the Contract Labour (Regulation and Abolition) Act was amended in 2006 to ban the employment of children below the age of 14 years as workers.

INTERNATIONAL OBLIGATIONS

56. **The UN protocol on slavery** includes factors like coercion, deception, trafficking and control over another person's life for exploitation.
57. **ILC approved Convention 177 on Home Work in 1996**, serving as an international precedent that home-based employment counts as real work too.
58. **International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families, 1990**: General Comment No. 1 on migrant domestic workers adopted by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) in 2010 takes note of the vulnerability of domestic workers who migrate in search of employment opportunities. It highlights the absence of express references to domestic work or domestic workers from a broad range of international and domestic laws. The General Comment notes the intersection of labour, immigration, contract and social-security laws where the domestic migrant workers feature. In absence of adequate legal infrastructure, they are prone to abuse on all counts. Non-registration of domestic workers exposes them even more. The Committee acknowledges that the exploitation of migrant workers may not commence and culminate within employment but may be a part of the entire migration cycle starting from the immigration process to arrival in the new country. Before departure, the migrant workers may have to deal with labour brokers, touts and administration for the necessary clearances. On arrival, they may be subjected to restrictions on freedom of movement, withholding of salary and identity documents by the employers, inadequate wages or living conditions, undefined or excessive work hours, lack of designated resting phases especially for fulltime house help, absence of social security benefits of pension and health as well as physical, psychological and sexual abuse. Women and children are

especially vulnerable. The Committee progressively calls for States to institute pre-departure procedures to facilitate legal migration of domestic workers and minimize the scope of their exploitation. Such procedures may include general information about the destination country, its laws and culture, their rights and obligations as well as minimum financial literacy. The States have also been urged to activate their Consulates and Embassies as centers of emergency support and counselling for the domestic workers. In addition, the Committee recommends inter alia that emergency health care be provided by the host country irrespective of the regular or irregular immigration status of the domestic workers.

59. **CEDAW General Recommendation No. 26 on Women Migrant Workers**

(2004): The Convention for the Elimination of all forms of Discrimination against Women (CEDAW) Committee, in the General Recommendation on migrant workers, highlights how gender discrimination and prejudices placed women migrant workers at a greater disadvantage than their male counterparts. They emphasized the need to integrate a gender perspective in the rights discourse for migrant workers and study it from the perspective of gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration. The Committee urges the member States to formulate a comprehensive gender sensitive and rights-based policy with participation of women migrant workers toward protection of their human rights. The Committee also calls for special focus on dismantling discriminatory restrictions on employment opportunities and increasing awareness among women for self-preservation in the migration cycle. Pre-departure medical tests are also to be administered with consent and dignity of the migrant worker. Host countries have been urged by the Committee to ensure that undocumented women are not subjected to administrative exploitation and harassment as they are even more vulnerable.

60. **ILO Domestic Workers Convention 189 and Recommendation No. 201:**
- ILO adopted the Domestic Workers Convention No. 189 and the accompanying Recommendation 201 were adopted in 2011. They constitute a milestone in the Domestic Workers Rights Movement and, if adhered to, bear the potential to alter the way the sector is perceived and engaged with. Convention 189 and Recommendation 201 draw from ILO's extensive experience in labour rights to advocate parity of domestic workers with those engaged in other sectors. The Convention underscores the undervaluation and invisibility of work in the sector and seeks, among others, the right of domestic workers to minimum wages, decent work hours and living conditions and a weekly day off, social security, and clear information on the terms and conditions of employment as available to other workers. The Convention also offers special protection to migrant domestic workers, putting the onus on the employers to sign a legal contract delineating the conditions and kind of work and the wages. The new standards put states under obligations to protect domestic workers from violence and abuse, to regulate private employment agencies that recruit and employ domestic workers, and to prevent child labor in domestic work. The Convention however is silent on minimum wages and does not even describe them in terms of percentage of average household income. Since its coming into force in 2013, the ILO Convention has been ratified by 22 countries and many have formulated domestic laws to strengthen protections for domestic workers in accordance with the standards set by the ILO Convention.
61. India although had signed the ILO Convention 189, it is yet to ratify it. In 2015, the Hon'ble Minister of State for Labour and Employment, Mr. Bandaru Dattatreya, in response to a question raised in the Parliament, stated that India would not be able to ratify the Convention 189 as it does not have laws at par with the Convention guarantees, which happens to be the procedural precondition for ratification of ILO Conventions. A copy of the statement by

Hon'ble Minister of State for Labour and Employment, Mr. Bandaru Dattatreya is annexed herewith and marked as **Annexure P9**. (Pg. _____ to _____)

62. **Goal 5 on 'Gender Equality' of the recently concluded Sustainable Development Goals** categorically raises a global demand to

“Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate”

63. The International Labour Office has published 'Effective Protection for Domestic Workers: A Guide for Designing Labour Laws' in 2012 to act as a handbook for formulating laws for domestic workers. It includes the provisions for working times, service conditions, rest, prohibition against discrimination, violence, ensuring minimum remuneration, etc. A copy of the Effective Protection for Domestic Workers: A Guide for Designing Labour Laws, 2012 published by ILO is annexed herewith and marked as **Annexure P10**. (Pg. _____ to _____)

SOME PROBLEMS PLAGUING THE DOMESTIC WORKER SECTOR

I: Lack of a clear definition of 'Domestic Work'

64. 'Domestic work' is undefined and hours are infinitely stretchable. In the absence of contracts governing the employment relationship, domestic workers are often expected to assist in childcare, eldercare, grocery shopping and chores outside their agreed work- for no additional compensation.
65. Article 1(a) of the ILO Convention 189, (2011) defines "Domestic Work" as work performed in or for a household or households and (b) defines "domestic worker" as any person engaged in domestic work within an employment relationship.
66. The indefinitely stretchable definition of domestic work is especially problematic as it lumps all kind of domestic work with unskilled labour and is detrimental to the workers in states which define the minimum wage as a factor of the kinds of

tasks performed. Except Kerala, most states limit the domestic work to cooking and cleaning and leave out from the ambit other tasks of varying skill levels performed at home.

67. As per the Draft National Policy on Domestic Workers 2011 (as provided in the Final Report of the Task Force on Domestic Workers: Realising Decent Work), “domestic worker” means a person who is employed for remuneration whether in cash or kind, in any household through any agency or directly, either on a temporary or permanent, part time or full time basis to do the household work, but does not include any member of the family of an employer. As per the Draft National Policy on Domestic Workers, based on the hours of work and nature of employment contract, domestic workers can be classified into:

a. Part-time worker i.e. a worker who works for one or more employers for a specified number of hours per day or performs specific tasks for each of the multiple employers every day.

b. Full-time worker i.e. a worker who works for a single employer every day for a specified number of hours (normal full day work) and who returns back to her/ his home every day after work.

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

68. Any policy, if implemented would need a clear definition of domestic workers. There is an ambiguity in the definition of domestic workers itself:

“There is no standard definition of domestic work in India and consequently, there is no accepted statistical standard to estimate domestic service. This is reflected in the fact that while the National Sample Survey Organization (NSSO) estimates of 2004-2005 reveal that the numbers of workers employed in private households, largely domestic workers, are 4.75 million, the unofficial estimates on domestic work in India vary from 2.5 million up

to 100 million. This variation in the data defining domestic work could be attributed to the differences in categorization of domestic work adopted by different government establishments. For instance, the category 'private household with employed persons' which is used to estimate the number of domestic workers in NSSO surveys has five sub-categories. They are, housemaid/servant; cook; gardener; gate keeper/chowkidar/watchman; governess/ babysitter; and others. On other hand the National Industrial Classification (NIC), which is an essential Statistical Standard for developing and maintaining comparable database according economic activities, includes domestic services such as "aaya, dhai, governess baby sitter etc." and "general household maintenance activities such as grooming the floor, dusting, cleaning of utensils etc." within the division of Other Personal Service Activities (Division 96). Again, National Classification of Occupations (NCO) captures domestic workers under different divisions. For instance, Occupational Division 5 (Service Workers and Shop Market Sales Workers) includes ayah, house-keepers etc., while Occupations of Domestic Servant, Domestic and Related Helpers, Cleaners, Launderers and Others are included within the Occupational Division 9 – Elementary Occupations. This create ambiguity in defining the scope and range of domestic work."

A copy of the JGU Law and Policy Brief, September 2015 is annexed herewith and marked as **Annexure P11**. (Pg. _____ to _____)

69. Even states that have notified minimum wages for domestic workers have done so inconsistently- with computation based on kind of tasks performed, number of hours spent working or a factor of the two.
70. The absence of a clear definition is largely due to the fact that the sector is informal, unorganized and in private sphere. As such, it makes definitions, compliance and monitoring difficult. There is also a visible lack of parity in negotiating powers of the employers and the employees as the supply of this labour overwhelms the demand, especially in developing countries, that discourages domestic workers from disputing work demanded in excess of agreed terms.

71. It is submitted that a lack of definition at the very outset leads to domestic work not being acknowledged as a part of productive workforce and contributor to the economy. It also leads to complications and inconsistencies in defining floor wages across states and absence of clear contractual agreements between employers and domestic help.

II. Lack of bargaining power and no legal rights on wrongful termination

72. As mentioned above, domestic workers, having historically been treated as 'servants' and not as providing a service, rarely have leverage when it comes to the terms of employment. This is exacerbated when looked at from a caste prism or when the supply of labour exceeds the demand and domestic helps are willing to work even under exploitative conditions.

73. Domestic workers are often fired without notice or a month's wage in its lieu, their salaries are deducted for damage in the household during their employment arbitrarily and without any pre-agreed terms. Wages are also withheld for days of absence due to sickness or any other reason, despite employment not being on a daily wage basis.

74. It is submitted that the domestic workers need to be empowered, with a minimum guarantee of paid leaves, a month's notice for termination or a month's wages in lieu, at the very least to protect their right of a livelihood with dignity.

III. Absence of 'day of rest'

75. The very first ILO Convention, adopted in 1919, limited hours of work and provided for adequate rest periods for workers to ensure high productivity and safeguard workers' physical and mental health. It was universally and formally acknowledged that working excessive hours posed a danger to workers' health and to their families.

76. ILO's Weekly Rest (Industry) Convention, 1921, which applies to mines, industrial establishments, transport sector etc., states in Article 2 that the staff

employed in any industrial undertaking, public or private, shall enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours. It shall, wherever possible, be fixed so as to coincide with the days already established by the traditions or customs of the country or district. This Convention was ratified by India in 1923 and is in force.

77. Article 6 of ILO's Weekly Rest (Commerce and Offices) Convention, 1957, which applies to trading establishments, service industry and office work, grants similar provision of 24 hours of consecutive leave in every period of 7 days. This convention, unlike the 1921 convention, has seen lesser buy-in by states, with only 63 states having ratified it as opposed to 120 for the 1921 convention. India has not ratified this convention.
78. According to the ILO Publication "Working Time Around the World: Trends in working hours, laws and policies in a global comparative perspective" by Sangheon Lee, Dierdre McCann and Jon C. Messenger, "weekly rest is perhaps the most universally accepted element of working time law, and almost all countries mandate at least one rest day".
79. In India, Section 13 of the Minimum Wages Act, 1948 provides for a weekly day of rest with remuneration. This Act is applicable to employees of various categories of mines, factories, mills, plantations, public transport and local authorities, with an option for the government to bring in domestic workers through notification by including them in the schedule.
80. In Karnataka and Odisha, which have defined minimum wages for domestic workers, one day of weekly rest has been acknowledged.
81. Various courts of India have upheld the principle of a mandatory day of rest to employees of various industries. In the 1967 Patna High Court case of *The State v. BL Ohri & Ors*, AIR 1967 Pat 441, the management of mines were ordered not to take work from employees on the weekly day of rest, and if so, compensate the employee later by allowing another day of rest.

82. In the case of *District Transport Manager, Orissa State Road Transport Corporation v. Presiding Officer, Labour Court*, [O.J.C. Nos. 35 to 44 and 46 to 51 of 1978, decided on 13.05.1983], the Orissa High Court held that workers who work on the weekly day of rest shall be entitled to double rate of daily work.
83. It is therefore submitted that domestic workers should not be excluded from the right of a weekly off, as is made available for the rest of the workforce, merely because they work in the unconventional space of private homes.

IV. Lack of minimum wages

84. The Minimum Wages Act, 1948, the primary labour welfare legislation to prevent exploitation of unorganised workers by paying unduly low wages, covers all employers who employ one or more workers in any scheduled employment in respect of which minimum wages have been fixed under the Act. This schedule however does not include domestic workers, but allows the Central and State Governments the option of including them by notification.
85. This Act also empowers the Central and State Governments to fix and revise the minimum rates of wages payable to workers in scheduled employments. The list of employment in the schedule is revised normally by the respective government with a view to provide protection to all who are unorganised and vulnerable. Thus, there are often additions to the scheduled list of the Act both at the central and state level, with changing categories and new forms of employment.
86. In the list of scheduled employment at the Central Government level, domestic work is not included, which means that minimum wage rate does not exist at the national level for domestic work.
87. At state level, only 8 out of 29 states have notified Minimum Wages for Domestic Workers. Karnataka was the first state to notify minimum wages for domestic work in 2004, two other states– Bihar and Andhra Pradesh– notified in 2007, Rajasthan in 2008 and Kerala & Jharkhand in 2010.

88. It is submitted that there are variations across states in the rate fixed, methods of wage fixation (time rate versus piece rate), definition of domestic work and impact on overall wages. For instance, in Karnataka, the preliminary wage rates were arrived at through taking into account the cost of living and basic caloric intake.
89. Furthermore, the tasks listed in the notifications are reflections of the larger social understanding of what constitutes domestic work, which is limited to traditional housework such as cleaning, cooking, child and elderly care. Domestic work is not homogenous and includes multiple tasks performed within an employment relationship. The most important characteristic that bind these multiple tasks is that they are performed for or in a private household or households, which makes it broad enough to accommodate the diverse tasks involved. The other categories of domestic workers such as gardeners, personal drivers and 'watchmen'/guards have mostly not been treated as domestic workers, except in Kerala.
90. Following are the approximate monthly minimum wages notified by the States for 8 hours of work per day:

State	Year of notification	Classification basis	Average monthly/daily minimum wage
Karnataka	2018	by task (washing clothes/utensils, housekeeping, looking after children)	~ ₹471.95 – 619.47 per day
Andhra Pradesh	2018	by working hours (½ hour, 1 hour, 1 ½ hours, 8 hours)	~₹6816 per month (for 8 hours per day for 26 days)

Bihar	2018	by task and working hours	~₹765-6109 per month
Rajasthan	2018	by task and hourly	~₹757-6058 per month
Kerala	2016	by task and working hours – Kerala is the only state which recognises home nurses, gardeners, drivers and security guards as domestic workers. Wage significantly varies according to task	~₹5070 - ~₹5850 per month
Odisha	2018	All categories of workers across industries, agriculture etc. have been assigned the same daily minimum wages classified by skill level. This lack of definition of what domestic work is and the tasks it encompasses could lead to the exploitation of domestic workers. Under domestic work, there is no classification of unskilled, semi-skilled or highly skilled work.	~₹224.30 to ₹284.30 per day
Jharkhand	2015	by task and working hours as well as by skill level	~₹770--6215 per month (for 8 hours)
Tamil Nadu	2018	By skill level and location (municipal, corporation area or village panchayat)	Rs 37-39 per hour (as per news reports)

91. The ILO report “Minimum Wage Setting Practices in Domestic Work: an inter-state analysis” notes that setting of a statutory minimum wage in itself does not ensure any improvement in market wages and/or working conditions. It requires

effective enforcement on the part of appropriate authorities, alongside awareness generation among workers.

92. In *Chandra Bhavan Boarding House v. State of Mysore*, AIR 1970 SC 2042, a five-judge bench of this Hon'ble Court declared that Article 43 of the Constitution as well as the Geneva Convention of 1928 enjoin the State to secure to all workers conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The fixing of the minimum wages was held to be just the first step in that direction. It was observed therein that, "in course of time, the state has to take many more steps to implement that mandate (of building a welfare society)."
93. It is therefore submitted that domestic workers be brought under the purview of the Minimum Wages Act, with clarity on the method of classification of work.

V. Absence of socio-economic safeguards including maternity leave, pension and insurance

94. As mentioned above in reference to the services supposedly available to domestic workers under the Unorganised Workers Social Security Act, 2007, domestic workers are falling through the cracks in availing the available benefits given the nature of their work, dependence on employers and complexities in accessing the multi-window schemes, where they are available.
95. It is submitted that particularly, the absence of pension and maternity benefits for domestic workers are especially menacing as over 80% of the workforce is comprised of women, who in many cases, are left alone and income less once their services are terminated due to age or maternity reasons.
96. The current law regulating paid maternity leaves and other safeguards to employment (the Maternity Benefits Act, 1961 as amended in April 2017) only extends to women employed in factories, mines and shops or commercial establishments employing 10 or more employees, excluding from the fold millions of women domestic helps who have to bear the economic burden

doubly-with the increase in expenses of the family and termination of employment due to maternity reasons or unpaid leaves from the employment.

97. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, AIR 2000 SC 1274, the Delhi Municipal Corporation was challenged for granting maternity leave only to regular female workers but denying it to female workers on muster roll on the ground that their service was not regularized. The Court progressively invoked Article 42 and observed in favour of the female muster roll workers that:

“A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled....The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period”.

98. It is therefore submitted that the Act be extended to include domestic workers and safeguards for their adequate pension and employees’ insurance be put in place.

VI. Unregulated placement agencies

99. It is also submitted that a lack of comprehensive legal and regulatory framework has resulted in mushrooming of unscrupulous placement agencies leading to widespread abuse, particularly of the low-skilled migrant workers. These include forced retention of documents and wages, illegal wage deductions and mental and physical torture, amounting to human trafficking and forced labour. On occasion these agencies have also facilitated as means for duping people and committing fraud. Thus, further creating mistrust and generating derisive attitude amongst the populace towards domestic workers. Despite the

government's Integrated National Plan of Action against Trafficking, there is a need for more comprehensive guidelines in accordance with international norms to prevent the rampant instances of abuse of domestic helpers, especially those who are migrated from smaller to big cities by touts, at the hands of such unregulated placement agencies.

VII. Discrimination against domestic workers

100. Discrimination against domestic workers exists not only at the economic level, but also at a social level. Almost reminiscent of the British colonial era where 'Dogs and Indians were not allowed', the domestic workers have been in, in several high-end apartments of Indian metros, been barred from using the same elevators and staircases as the residents of those apartments. Similarly, domestic workers have often been denied entry inside restaurants and clubs, simply on the basis of their appearance. Copies of news articles regarding incidents of discrimination against domestic workers are annexed herewith and marked as **Annexure P12.** (Pg. _____ to _____)

CASE LAWS

101. In 2003, the National Domestic Workers Welfare Trust moved the Apex Court through a PIL, *National Domestic Workers Welfare Trust v. Union of India* (WP No.160/2003), for a comprehensive legislation to protect the service conditions of domestic workers throughout the country. The Government brought to the notice of the court that it was in process of bringing the social welfare legislation on unorganized sector which would also include domestic workers. The Apex Court disposed the writ petition in 2006, noting that steps had been taken by the Government of India to protect the interest of the domestic workers by seeking to enact appropriate legislation in that behalf. This petition resulted in the inclusion of the domestic workers in the Unorganised Sector Workers Bill, 2004. While many of this bill's elements were absorbed as part of the Unorganised Social Security Act 2008. However, the need for a comprehensive

legislation regulating various aspect of domestic workers, ideated as part of the above-mentioned petition continues to be at large. A copy of the order dated 7.4.2006 in *National Domestic Workers Welfare Trust & Ors. v. Union of India*, WP (C) 160 of 2003 is annexed herewith and marked as **Annexure P13**.
(Pg._____to_____)

102. In another such case, *Mrs. Florence Joel v. Mater Dei School and Ors., 113 (2004) DLT 511*, the Petitioner was an illiterate widow who had been engaged by Mater Dei School as a class IV employee. Her duties were washing clothes, cooking food, dusting and cleaning the classrooms as also the residential quarters of the Sisters and the chapel where the Sisters prayed. The School did not issue any formal appointment letter to the petitioner. After over 13 years of service, the petitioner's services were terminated and she was paid a sum of Rs. 13,288/- towards settlement of dues. The petitioner was not paid a regular salary and other retiral benefits, as paid to other employees. The court held that the petitioner was not an employee of the school as she had failed to produce any appointment letter and did not figure in any of the staff lists. The court commented that her presence in photographs in the school magazine shows that she was well treated and looked at as part of the Mater Dei family, however that does not make her an employee. The school's contention that they gave her the job as purely a humanitarian gesture of help was accepted by the court. This case elucidates the hardships which may befall domestic helps in absence of formal negotiated terms of employment.
103. In the case of *Shramjeevi Mahila Samiti v. State of NCT of Delhi*, SLP (CrI) No. 150 of 2012, the abysmal situation with regard to the implementation of the various provisions within the Unorganised Workers Social Security Act, 2008 were brought to light. The Supreme Court starting with NCT of Delhi had directed a pilot project to be implemented wherein all domestic workers would be registered which includes issuance of identity cards and extension of all benefits as enumerated in the Act. The Supreme Court also directed that till the point

these directions were not complied with the requisite state governments were not to be granted any further funds as laid down in the Act. In a recent order of the Hon'ble Supreme Court, a two judge Bench directed the Chief secretaries of all the States and Administrators of all the Union Territories to start registering 10% of the estimated number of workers every month starting from the month of January, 2019. A copy of the order dated 21.8.2018 passed by this Hon'ble Court in *Shramjeevi Mahila Samiti v. State of NCT of Delhi*, SLP (Crl) No. 150 of 2012 is annexed herewith and marked as **Annexure P14**. (Pg. _____ to _____)

104. However, while the above registration will help the domestic workers access maternity, pension and other benefits under the Unorganised Workers Social Security Act, 2008, it will not enable the workers to demand for fair conditions of work such as payment of minimum wages, weekly rest, etc.

PREVIOUS FAILED ATTEMPTS TO BRING IN A LAW

105. Previous attempts at formalizing work environment for domestic workers towards introducing minimum humane working conditions like minimum wages, maximum hours per day, weekly leaves, compulsory registration of workers, welfare fund for workers included:

- a. 1959- Domestic Workers (Conditions of Service) Bill-a private member bill in Rajya Sabha
- b. All India Domestic Servants Bill 1959 introduced in Lok Sabha
- c. 1972- Domestic Workers (Conditions of Service) Bill-private member-Lok Sabha
- d. Domestic Workers (Conditions of Service) Bill, 1977, another private member-Lok Sabha- asking for the Industrial Disputes Act, 1947 to be extended to domestic workers.
- e. 1989- House Workers (conditions of service) Bill
- f. Domestic Workers Welfare and Social Security Act 2010

- g. Delhi Private Placement Agencies (Regulation) Bill, 2012 requiring compulsory registration of all placement agencies of domestic workers, keeping of records of clients and employees and cancellation of licenses if non-compliance
- h. Domestic Worker (Registration and Social Security and Welfare) Bill 2008
- i. Domestic Workers Welfare and Social Security Bill, 2010 floated by the Delhi Commission of Women

Two private member bills floated by Members of Parliament Mr. Shashi Tharoor and Mr. Oscar Fernandez in August 2016 and April 2017 are pending before the Lok Sabha.

CASES OF RAMPANT ABUSE

106. The data released by the Ministry of Women and Child Development in 2014 details the scale of abuse reported by domestic workers across India. West Bengal had the highest number of cases of such abuse in 2012, with 549 maids and helpers filing complaints against their employers. The southern state of Tamil Nadu registered the second highest number with 528 cases reported in 2012, while its neighbor Andhra Pradesh had the third greatest with 506 cases registered over the same period.
107. In New Delhi, January 2018, Delhi Commission for Women rescued a 14-year-old girl from Jharkhand. Her employer attacked her with scissors, had beaten, burnt and even bitten her. *"Little girl was so brave. Her lady employer so vicious. A doctor herself, how could she torture a 14 yr old in such brutal manner. Little girl was confined 2 house, not given sweater, food & has been reduced 2 bones. Police arrested lady employer!"* as per Ms. Swati Maliwal's tweet, Chairperson, Delhi Commission for Women. A copy of the news article regarding the rescue of a 14-year-old girl domestic worker from Jharkhand is annexed herewith and marked as **Annexure P15**. (Pg. _____ to _____)

108. In Gurgaon, March, 2017, an 18-year-old domestic worker from Assam allegedly committed suicide by jumping from the 11th floor of the building she worked at. The deceased girl allegedly wanted to leave her job and had packed her bags, but her employers refused to let her go. A case under Section 306 of IPC (abetment of suicide) was registered against the employers. A copy of the news article regarding the suicide by a domestic worker from Assam is annexed herewith and marked as **Annexure P16.** (Pg. _____ to _____)
109. In another case reported in Delhi, December, 2016, a 24-year-old domestic worker from West Bengal admitted to Ram Manohar Lohia Hospital, New Delhi after she was allegedly physically abused by her employer. Delhi Commission for Women chief Swati Maliwal alleged that the employer beat her up with an iron rod. "The girl has been subjected to extreme torture and abuse. She is presently bed-ridden. Her condition was horrifying and she had several marks of abuse on her body. She complained of being beaten with iron rods," said Ms. Maliwal. The police, subsequently, registered a case based on the victim's statement. A copy of the news article regarding the hospitalization of a domestic worker in Delhi following brutal assaults by the employer is annexed herewith and marked as **Annexure P17.** (Pg. _____ to _____)
110. In Mumbai, in August 2015, a FIR was registered against former India cricketer Vinod Kambli and his wife Andrea Hewitt after their maid alleged that the couple was not paying proper wages to her and when she asked for it, they misbehaved with her. A copy of the news article regarding the FIR registered against former India cricketer Vinod Kambli is annexed herewith and marked as **Annexure P18.** (Pg. _____ to _____)

LATEST ATTEMPT AT POLICY FORMULATION

111. The Government however in May 2012 extended the Rashtriya Swasthya Bima Yojana (RSBY), a national health insurance scheme to domestic workers to facilitate basic health care and hospitalization.

112. Recently, efforts have been made towards creation of skill council for domestic workers by the Government-run National Skill Development Corporation to train the existing and new domestic workers and impart skills that will make them eligible for placement outside the country. Placement is envisaged to be provided through government agencies in countries with understanding to ensure that they are paid adequate wages in a dignified work environment.
113. The Draft National Policy on Domestic Workers proposing *inter alia* inclusion of domestic workers in existent legal framework of labour laws and extension of social welfare services to domestic workers was moved for approval of the Union Cabinet in August 2015 but has been gathering dust for over three years now. In a reply received in September 2016 from the Ministry of Labour and Employment to a communication by the Petitioner No. 1, it was stated that "the matter is under active consideration of the Government". However, more than a year has passed even after that, without any signs of progressive safeguard of the rights of domestic workers. A copy of the news article regarding the Government's efforts to formulate a national policy for domestic workers is annexed herewith and marked as **Annexure P19**. (Pg. _____ to _____)
114. In two separate replies to unstarred questions in the Lok Sabha in March 2018, Shri Santosh Kumar Gangwar stated that "the Ministry of Labour and Employment is considering to formulate a National Policy on Domestic Workers. However, there is no time frame." However, considering the delay of nearly three years in the formulation of a National Policy, the apathy of the government in the matter is evident.
115. As mentioned above, some states have notified the minimum wage for a domestic worker under the Minimum Wages Act. While some states have mentioned the activities performed by the domestic worker under unskilled or semi-skilled category while other states have mentioned activity -wise rate per hour (or per day or per month, as the case maybe). However, there is no way to ensure the implementation of the said minimum wage and lack of knowledge

on the part of the workers and lack of mechanisms to determine the accountability of the employer puts them at a disadvantageous position.

116. That in April, 2011, the National Advisory Council's Working Group on Domestic Workers, headed by Ms. Mirai Chatterjee, made a series of recommendations suggesting that the proposed national policy for domestic workers should ensure a daily minimum wage without sex discrimination, weekly offs and paid annual leave. A copy of news articles about the recommendations of the the National Advisory Council's Working Group on Domestic Workers is annexed herewith and marked as **Annexure P20**. (Pg._____to_____)

117. It is submitted that even though some social security measures have been made available to domestic workers through inclusion in certain legislations and schemes, no legislative or executive action has been taken to comprehensively regulate their conditions of work including number of hours, minimum wages, adequate work environment, weekly and paid leaves and complaint mechanisms.

GLOBAL BEST PRACTICES

118. **USA:** The **Domestic Workers' Bill of Rights of 2010**, a comprehensive labour legislation to provide protection for domestic workers, enacted by the New York state. This law provided the workers to demand additional pay for overtime, working shifts, provision for paid and unpaid leaves and social security. Following New York, Hawaii and California also established similar law in 2013 which does not merely protect the domestic workers but also provides for rest breaks, right to sleep and provisions for meals. Massachusetts, Oregon, Illinois and the other states are following the cue. A copy of the US Domestic Workers' Bill of Rights of 2010 is annexed here with and marked as **Annexure P21**. (Pg._____to_____)

119. **Canada:** Under the **Employment Standards Act, 2000**, domestic workers have the same rights as other employees in Ontario workplaces. This legislation covers a variety of issues relating to the domestic workers, ranging from the

eight-hour work shifts to paid and unpaid leaves, overtime pay and legalities against wrongful termination without severance pay.

120. **South Africa:** The **Basic Conditions of Employment Act, 1997** has not only regularized the minimum wages, which are revised on a yearly basis but has also provided for penalty where the employer fails to comply with the provisions of this Act. The Domestic Workers Skills Development Project, funded by the National Skills Fund, has been designed to improve the skill levels of domestic workers in South Africa and to address the lack of education, skill development and the present socio-economic state. In addition to this, the South African Domestic Services and Allied Workers Union has systematically organized the domestic workers, in lieu of providing them with the rights, along with a provision for minimum wage.
121. **Hong Kong:** In Hong Kong, there are standard employment contracts for domestic “helpers” under which, they are entitled to a minimum wage, food allowance, free medical treatments, both paid and unpaid leaves, etc. However, domestic workers do not have a legislation of their own, they are entitled for the same rights as any other employees.
122. **Russia:** Domestic workers are covered under the federal law on the **Employment of the Population in Russia** and **the Labour Code of Russia** and are treated almost similar to any other employee.
123. **Europe:** In accordance with **C189**, major states in the EU made it a point to amend their laws to provide rights to domestic workers. Labour inspection in private homes, tax relief and deduction schemes are some of the important aspects of the protection of the domestic workers.
124. **Brazil:** After ratifying C189, Brazil introduced **Law No. 11.324/2006** several rights for the domestic workers and while earlier they had no social security protection, some of them are even paying taxes (deducted at source). Brazil has also provided for paid holidays, fines against unfair dismissal as well as

introduced maternity leave and working shifts. Furthermore, a Constitutional Amendment 72/2013 recognized the fundamental labour rights for a domestic worker and they shall be treated the same when it comes to regulations relating to night shifts, severance pay, etc. In addition to this, **Decree No. 6481 in 2008** prohibited workers under the age of 18 years to engage in domestic work and issued a complete ban on child labour.

125. The Petitioners are attaching **Annexure P22**, which is a draft Bill prepared by the National Platform for Domestic Workers (Petitioner No. 2) which may be used for reference as a compilation of necessary provisions to ensure welfare of domestic workers and humane working conditions.

GROUND

- A. Because Articles 21, 14, 15 and 23 (1) guarantee to all citizens the right to live with dignity which includes the right to a dignified livelihood, the protection against discrimination on the basis of sex and the right against exploitation.
- B. Because a legislative vacuum exists for more than 4.2 million domestic workers in so far as the recognition of the right to a dignified livelihood under Article 21 of the Constitution is concerned.
- C. Because majority of domestic workers comprises of children and women, both belonging to vulnerable sections of the society.
- D. Because the Hon'ble Supreme Court has laid down detailed guidelines in cases where the executive has failed to enact the law and the urgency of the situation demanded protection of vulnerable citizens. In the case of *Vishaka & others v. State of Rajasthan and others*. [AIR 1997 SC 3011] the Hon'ble Court was approached for enforcement of fundamental rights for working women under Articles 14, 19 and 21 of the Constitution. The Court not only granted relief by way of providing basic definitions of sexual harassment at the workplace but also laid down detailed guidelines to deal with the same. Similarly, in the case of *D.K Basu v. State of West Bengal* (1997) 1 SCC 416), guidelines with regards

to arrest and detention were made by the Supreme Court of India and in the case of *PUCL v. Union of India*, (1997) 1 SCC 301 the Court affirmed the right to food as necessary to uphold Article 21 of the Constitution.

- E. Because the Respondent is under a Constitutional obligation to ameliorate the plight of domestic workers by bringing in adequate legal safeguards for minimum wages, economic empowerment and decent working conditions for the domestic workers.
- F. Because domestic workers neither have a comprehensive legislation guaranteeing their human rights, nor have been adequately protected under other socio-economic legislations.
- G. Because domestic work is undefined and hours are infinitely stretchable.
- H. Because domestic workers lack bargaining power and have no legal rights on wrongful termination.
- I. Because most domestic workers are denied a weekly day of rest, a right fundamental to the very concept of work.
- J. Because domestic workers in most parts of India are not statutorily guaranteed a minimum wage.
- K. Because most of domestic workers are migratory and displaced from their habitat and therefore more vulnerable to abuse in absence of legal protection.
- L. Because a proper law governing rights of domestic workers will help in identifying and protecting this transitory work force and facilitate collection of data for cohesive policy making.
- M. Because India has not ratified ILO Convention 189 for the protection and welfare of millions of domestic workers in the country even after more than 5 years have passed since its coming into force and ratification of the Convention by 22 countries.

- N. Because denial of weekly day of rest, minimum wage, redressal against wrongful termination, etc. are in violation of constitutional rights of the domestic workers.
- O. Because Article 38 of the Constitution of India makes it incumbent upon the state to secure a social order for the promotion of the welfare of the people.
- P. Because Article 39(a) mandates that the State shall direct its policy towards securing that the citizens, men and women equally, have the right to adequate means of livelihood.
- Q. Because Article 41 directs the State to ensure effective provisions for right of work. The Article provides as below:

“41. Right to work, to education and to public assistance in certain cases- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right of work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

- R. Because Article 42 mandates that the State shall make provisions for securing just and humane conditions of work and for maternity benefit.
- S. Because Article 43 provides that the State shall endeavor to secure inter alia conditions of work ensuring decent standard of life. It provides as below:

“The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.”

PRAYERS

In view of the facts & circumstances stated above, it is prayed that this Hon'ble Court may be pleased to direct the Respondent to:

1. Recognise domestic work as work covered adequately under the Minimum Wages Act 1948 and 'workers' under the Act be read to include domestic workers and also that domestic workers be notified as workers under the Act in the Centre as well as all the States, as has been done in eight states mentioned above.
2. Recognise provisions such as maximum eight-hours duty and at least one mandatory weekly leave as basic rights guaranteed under the right to dignified life under Article 21 of the Constitution and for these provisions be extended to domestic workers.
3. In light of legal vacuum created due to absence of a statute protecting the domestic workers, issue interim guidelines for safeguarding the human rights and interest of domestic workers inside private homes including *inter alia* right to paid leaves, notice of termination and one month's salary in lieu of notice of termination in line with ILO Convention 189 and Articles 38, 39, 41, 42 and 43 of the Constitution of India until a law is brought in place.
4. Extend to the domestic workers all benefits of citizenship and welfare schemes, whether applicable to organized or unorganized sector workers, such as health, disability, pension, insurance and maternity benefits.
5. Appoint a Committee of Experts under the supervision of this Hon'ble Court to suggest means to regulate the domestic workers' employment agencies; terms and conditions of dignified employment of domestic workers; and setting up of a mechanism for dispute resolution.
6. Issue any other appropriate writ that this Hon'ble Court may deem fit.

Through

Pallav Mongia
Advocate on Record for the Petitioners

Filed on: