

# DOMESTIC WORKERS IN INDIA: NEED FOR A COMPREHENSIVE LAW

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## **Abstract**

*In India, exploitation of domestic workers is rampant. Such incidents involving women and children are regularly reported. With no rights, most of them have become contemporary slaves. Many of them are trafficked and exploited by the placement agencies, which operate without any form of State regulations. In the last few decades there has been a tremendous growth in the demand for domestic workers. To meet this demand there has been a spurt of thousands of placement agencies providing domestic workers. The feeble master-servant relationship leads to low wages, sexual abuse, cruelty and ill-treatment of domestic workers. Employment of children as domestic workers is another serious issue. Individuals belonging to the lower strata of the society are forced to domestic work on account of their financial backwardness. The governing authority has always turned blind eye towards the welfare of this unorganised sector. The stray incidents of judicial intervention are the only ray of hope. A comprehensive legislation is the need of the hour.*

**Key words:** *Domestic worker, social security, minimum wage, sexual harassment, state insurance, unorganised workers*

## **I. Introduction**

Domestic workers are the largest unorganised working class in India.<sup>1</sup> Majority of them belongs to Schedule Caste, Schedule Tribe or Other Backward Community. Most of them fall under the category of women and children. Their nature of work varies from cooking, cleaning, washing, gardening, purchase of vegetables and consumer items. In many cases they are compelled to do agriculture and allied works also.<sup>2</sup> The absence of any specific study makes the ascertainment of the total number of domestic workers, difficult. However, a 1980 study conducted by the Catholic Bishops Conference of India (CBCI) found that in Kerala and Tamil Nadu 90 per cent of them were females; and in Delhi it was 45 per cent.

Problems faced by the domestic workers are innumerable: less wages, unlimited working hours, inadequate working atmosphere, low quality food, sexual exploitation, lack of medical care and social security are few in the umpteen issues. The domestic workers employed in the Gulf countries are the most vulnerable group. With no rights, most of them have become contemporary slaves. Employment of children as domestic workers is another serious issue.<sup>3</sup> Many of them are trafficked and exploited by the placement agencies, which operate without

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<sup>1</sup> Nicola C. Armacost, "Domestic Workers In India: A Case for Legislative Action" 36 (1) *JILI* 53-63 (1994)

<sup>2</sup> Tanuja Trivedi, *Domestic Women Workers*, (Jnanada Prakashan (P&D), New Delhi, 2009), p. 187

<sup>3</sup> Prachi Jaiswal, *Child Labour (A Sociological Study)* (Shipra Publications, 2000), p.12

any form of State regulations. In the last few decades there has been a tremendous growth in the demand for domestic workers. To meet this demand there has been a spurt of thousands of placement agencies providing domestic workers. However, a specific statute to regulate this unorganised sector is absent in India. The present article analyzes the international and national legal frame work governing domestic workers.

## II. Who is a ‘domestic worker’?

The term ‘domestic worker’ is not susceptible to any precise definition. In India, the absence of a central statute governing them makes the attempts to define the term, difficult. Anyhow, the Domestic Workers (Welfare and Regulation of Employment) Bill, 2015 introduced in the Lokh Sabha, defines "domestic worker" as “a person employed in a household for domestic work.”<sup>4</sup> The meaning given in the Bill is inadequate. The term “domestic work” is also defined vaguely as “all household chores, child care, personal care or any other job connected with household work.”<sup>5</sup> Though the Bill was introduced in 2015, so far it has not received the approval of the Parliament.

The International Labour Organisation (ILO) Convention on ‘Decent Work for Domestic Workers, 2011 defines the term “domestic worker” so as to include “any person engaged in domestic work within an employment relationship.”<sup>6</sup> The Convention has given wider amplitude and has more application. The definition covers all domestic work inside and outside the house and done in an employer – employee relationship. Hence, an office boy purchasing vegetables for his master can be considered as a domestic worker. The Convention also defined the word ‘domestic work’ as that “performed in or for a household or households.”<sup>7</sup> However, persons who perform domestic work occasionally or sporadically were excluded from the definition.<sup>8</sup>

In 2017, the Ministry of Labour & Employment has taken steps for simplification, amalgamation and rationalization of Central Labour Laws and replacing them with four Labour Codes *viz.* Code on Wages, Code on Industrial Relations, Code on Social Security & Welfare, and Code on Occupational Safety, Health & Working Conditions. The Draft Labour Code on Social Security & Welfare defined the term “domestic worker”<sup>9</sup> as “a person who is employed for remuneration whether in cash or kind, in any house hold or similar establishments through any agency or directly, either on a temporary or contract basis or permanent, part time or full time to do the household or allied work and includes a replacement worker who is working for the main workers for a short and specific period of time as agreed with the main worker.” Explanation- household and allied work includes but is not limited to activities such as cooking or a part of it, washing clothes or utensils, cleaning or dusting of the house, driving , gardening, caring/nursing of the children/sick/old/mentally challenged or disabled persons. This is an exhaustive definition of domestic worker.

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<sup>4</sup> Section 2 (a), The Domestic Workers (Welfare and Regulation of Employment) Bill, 2015

<sup>5</sup> *Ibid.* Section 2 (b)

<sup>6</sup> Article 1 (b), ILO Convention on Decent Work for Domestic Workers, 2011

<sup>7</sup> *Ibid.* Article 1 (a)

<sup>8</sup> *Ibid.* Article 1 (c)

<sup>9</sup> Clause 2.39, Draft Labour Code on Social Security & Welfare, Ministry of Labour & Employment, Government of India, New Delhi, Dated 16<sup>th</sup> March 2017

### III. International Norms to Protect Domestic Workers

- **Domestic Workers Convention, 2011**

In 2011, an overwhelming majority of 185 member States of the ILO voted in favour of adopting the Domestic Workers Convention No. 189. The Convention provides: (a) freedom of association and the effective recognition of the right to collective bargaining, (b) the elimination of all forms of forced or compulsory labour, (c) the effective abolition of child labour and (d) the elimination of discrimination in respect of employment and occupation.<sup>10</sup> Member State shall take measures to ensure that domestic workers:- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household, (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave and (c) are entitled to keep in their possession their travel and identity documents.<sup>11</sup> This is the only document recognised by the member States for the protection of rights of the domestic workers. The provisions of the Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 etc have general application.

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979**

The Convention empowers the member States to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.<sup>12</sup>

### IV. Indian Constitutional and Statutory Frame Work

- **Protection under Indian Constitution**

Constitution is the *grund norm* in every State. It protects the rights of the vulnerable sections of the society. In a report submitted by the Ministry of Women and Child Development, 40% of India's children have been declared to be vulnerable or experiencing difficult circumstances. They are entitled to special protection under Articles 14, 15, 17, 21, 23 and 24 of the Constitution.<sup>13</sup> Every person is entitled to equality before the law and equal

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<sup>10</sup> Article 3, International Labour Organisation Convention on Domestic Workers, 2011

<sup>11</sup> *Ibid.*

<sup>12</sup> Article 11, Convention on the Elimination of All Forms of Discrimination against Women, 3 September 1981

<sup>13</sup> *Bachpan Bachao v. Union of India* (2011) 177 DLT 198

protection of the laws;<sup>14</sup> and no person can be deprived of his life or personal liberty except according to procedure established by law.<sup>15</sup>

Article 21 of the Constitution is the sum and substance of human rights of a person. In *Bandhua Mukti Morcha v. Union of India*<sup>16</sup> P.N Bhagwati, J. observed that “It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin case* to live with human dignity, free from exploitation. 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.”

The Directive Principles of State Policy under Part IV of the Constitution also impose State responsibility to secure:- (a) equal right to an adequate means of livelihood, (b) ownership and control of the material resources of the community are so distributed as best to sub serve the common good,(c) the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, (d) equal pay for equal work for both men and women, (e) 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 and (f) 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.<sup>17</sup>

- **The Minimum Wages Act, 1948**

The purpose of the Act is to provide minimum rates of wages in certain employments. In *Bijay Cotton Mills Ltd. v. State of Ajmeer*,<sup>18</sup> the apex court held that ‘it can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of the Constitution. The workmen must get minimum wages and if the management cannot afford to do so, it has no right to exist.<sup>19</sup>

One of the central pillars for ensuring conditions of decent work for domestic workers in India has been the wage rates notified for domestic work. Despite the patchy coverage of domestic workers under various labour laws, in recent years, some State governments have notified minimum wages for domestic workers.<sup>20</sup> The Supreme Court further held that while fixing the minimum wages, expenses for children, education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage should constitute

<sup>14</sup> Article 14, the Constitution of India, 1950

<sup>15</sup> *Ibid*, Article 15, See also, *NHRC v. State of Arunachal Pradesh*; AIR 1996 SC 1234

<sup>16</sup> AIR 1984 SC 802

<sup>17</sup> Article 39, Constitution of India, 1950

<sup>18</sup> 1955 ILLJ 129 SC

<sup>19</sup> *Rajamani Transports v. Their Workmen*, 1952 II LLJ 785 (LAT)

<sup>20</sup> Kamala Sankaran, “Domestic Work, Unpaid Work and Wage Rates” 48 (43) *EPW* 85-89 (2013)

25 per cent of the total minimum wage. The wage structure, which approximately answers the above components, is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances.<sup>21</sup>

Even if there is no statutory direction for the payment of fixed wages to the domestic workers, some State governments issued executive orders for payment of minimum wage to the domestic workers. These orders are neither based on any study nor considering index of living conditions of the workers. The Labour and Skill (E) Department, Government of Kerala has directed to pay Rupees 5070 as monthly minimum wage for the domestic works.<sup>22</sup>

- **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

Domestic servants are often excluded from labour laws which mean they are not entitled to the same rights as other workers.<sup>23</sup> Sexual harassment against domestic workers is a nightmare prevalent in the domestic worker scenario. House owner, his wife, children, friends, relatives, and neighbours are always a threat to the domestic workers. In *Vishaka v. State of Rajasthan*<sup>24</sup> the Supreme Court issued certain guidelines for the protection of women employees at work place. The Sexual Harassment Act, 2013 protects women against ‘sexual harassment’ at ‘workplace.’ It declares that, ‘no woman shall be subjected to sexual harassment at any workplace.’<sup>25</sup> The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: (i) implied or explicit promise of preferential treatment in her employment; or (ii) implied or explicit threat of detrimental treatment in her employment; or (iii) implied or explicit threat about her present or future employment status; or (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or (v) humiliating treatment likely to affect her health or safety.<sup>26</sup>

The term “workplace” includes *inter alia*, “a dwelling place or a house;”<sup>27</sup> and “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- (i) Physical contact and advances; or
- (ii) A demand or request for sexual favours; or
- (iii) Making sexually coloured remarks; or
- (iv) Showing pornography; or
- (v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.<sup>28</sup>

Any aggrieved woman can make a complaint against the respondent.<sup>29</sup> “Aggrieved woman” means: (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; and (ii)

<sup>21</sup> *The Workmen of Reptakus Brett Co. v. Reptakus Brett Co Ltd*, AIR 1992 SC 504

<sup>22</sup> G.O (P) No.202/2016 LBR,dtd.29 Dec 2016, Labour and Skill (E) Department of Government of Kerala

<sup>23</sup> Uma Kothari, “Women’s Paid Domestic Work and Rural Transformation; A Study in South Gujarat” in Padmini Swaminathan (ed.), *Women and Work* (Orient Black Swan, 2002), p. 245

<sup>24</sup> AIR 1997 SC 3011

<sup>25</sup> Section 3 (1), the Sexual Harassment Act, 2013

<sup>26</sup> *Ibid.*, Section 3 (2)

<sup>27</sup> *Ibid.*,Section 2 (o)

<sup>28</sup> *Ibid.*, Section 2 (n)

<sup>29</sup> “Respondent” means a person against whom the aggrieved woman has made a complaint. (Section 2 (m))

in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.<sup>30</sup>

- **Employees' State Insurance Act, 1948**

In many situations illiterate domestic workers are forced to work in a pathetic situation in connection with the health, safety and security of the worker. Presently, except under vague tortious law principles, no special statutory obligations have been imposed upon any person to protect the health and safety of the domestic workers. Even though the Employees State Insurance (ESI) Act, 1948 was enacted mainly against employees in the industry and other business organisations, it is advisable to apply it to domestic workers also. The object of the Act is to provide for certain benefits to employees in case of sickness, maternity and 'employment injury' and to make provision for certain other matters in relation thereto.

In *P. Asokan v. Western India Plywoods Ltd*<sup>31</sup> Sukumaran, J. beautifully explained the importance of E.S.I Act as "Law had no difficulty in projecting an equity aspect, in imposing a burden on the master and relieving the hardship of the servant, who was at any rate in those days, an underdog, with unlimited disabilities and difficulties. Even when the servant was guilty of a tort, the master also was saddled with the responsibility to meet the claim of the victims of the servant's negligence. The theory of vicarious liability was evolved and developed over the years."

- **Unorganised Workers' Social Security Act, 2008**

There are many unorganised sectors of working class in the length and breadth of India. Workers associated with agriculture, farming, weaving, fishing, house hold works, painting, art, mason, carpenter, black smith, gold smith are the major unorganised working class in India. There is a special statute for protecting the rights of the above class. This Act provides for the social security and welfare of unorganised workers. The Act defines "home-based worker" as 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.<sup>32</sup> Similarly "self-employed worker" means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government.<sup>33</sup>

The Act defines "unorganised sector" as an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.<sup>34</sup> And "unorganised worker" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act.<sup>35</sup> The Act contains

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<sup>30</sup> *Ibid.*, Section 2 (a)

<sup>31</sup> AIR 1987 Ker 103

<sup>32</sup> Section 2 (b), The Unorganised Workers' Social Security Act, 2008

<sup>33</sup> *Ibid.*, Section 2 (k)

<sup>34</sup> *Ibid.*, Section 2 (l)

<sup>35</sup> *Ibid.*, Section 2 (m)

provision for National Social Security Board<sup>36</sup> and State Social Security Board<sup>37</sup> for the effective implementation of the provisions of the Act.

In a recent decision in 2018- *Shramjeevi Mahila Samiti v. State of NCT of Delhi*-<sup>38</sup> the Supreme Court directed the Centre not to disburse any grants to the States which have not registered domestic workers under the Unorganised Workers Social Security Act. The directions to the Centre came on a petition filed by an NGO which had told the court that despite the Act coming into force in 2008 and framing of several schemes, no domestic worker has enjoyed their benefits.<sup>39</sup>

- **The Child Labour (Prohibitions & Regulation) Act, 1986**

More than one-third of the country's population, around 440 million is below 18 years. Resources must be invested in children proportionate to their huge population.<sup>40</sup> However, they are widely used for bonded labour, domestic work, restaurants, agricultural labour, construction activity, carpet industry, garment industry, fish/shrimp export and other work in the formal and informal economy. The Child Labour (Prohibitions & Regulation) Act was enacted to ban employment of children below 14 years and to regulate the conditions of work of children in employments where they are not prohibited and also to lay down enhanced penalties for employment of children. The Act provides total ban for works described in part A and B of the Schedule.<sup>41</sup> The Act contains provision for hours and period of work<sup>42</sup> and weekly holidays.<sup>43</sup>

## V. State Government Initiatives

Many State governments including Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan and Tamil Nadu have taken several steps to improve the working conditions of domestic workers and to provide access to social security schemes. Some have introduced minimum wages for domestic workers. The State governments of Kerala, Maharashtra and Tamil Nadu have also constituted Welfare Boards for domestic workers. In Pune, domestic workers need to register with the Maharashtra Domestic Workers Welfare Board formed under the Maharashtra Domestic Workers Welfare Act, 2008. Lise Grande, the United Nations Resident Coordinator stated,<sup>44</sup> “All workers, including domestic workers have the right to fair working conditions;” and Tine Staermose, Director, ILO Country Office for India and Decent Work Team for South Asia observed, “Current initiatives in India that include expanding access to health insurance, setting minimum wages for domestic work, and organizing domestic workers, are important steps towards ensuring decent working and living conditions for domestic workers.”<sup>45</sup>

<sup>36</sup> *Ibid.*, Section 5

<sup>37</sup> *Ibid.*, Section 6

<sup>38</sup> Special Leave to Appeal I (Criminal) No. 150/2012

<sup>39</sup> The apex court had on March 24, 2017, directed the Centre to constitute a National Social Security Board as per the provisions of the Unorganised Workers' Social Security Act, enacted in the year 2008. The Centre had set up the board on May 22, 2017 See, *National Domestic Workers Welfare Trust v. The State of Jharkhand* (2014) 1 AIR Jhar R 249

<sup>40</sup> *Bachpan Bachao Andolan v. Union of India*, (2011) 177 DLT 198

<sup>41</sup> Section 3, Child labour in domestic work under Child Labour (Prohibitions & Regulation) Act, 1986

<sup>42</sup> *Ibid.*, Section 7

<sup>43</sup> *Ibid.*, Section 8

<sup>44</sup> <http://in.one.un.org>

<sup>45</sup> *Ibid.*

## VI. Conclusion and Suggestions

Dr. Jayanti Ghosh, while delivering the second UN Public Lecture on ‘The Invisible Workers: Rights, Justice and Dignity for Domestic Workers’ stated that, “No society can survive without the massive contribution that domestic work makes to national income.” Yet it remains largely invisible and undervalued; a reflection of the low value India places on social reproduction.<sup>46</sup> Domestic workers are unorganised and the most vulnerable group in the society. They are facing bad working conditions, lowest payment and sexual harassment. The number of disputes registered with respect to the human right violations among domestic workers is at rock bottom. There are cases of sexual harassment at the work place, but many women prefer to quietly leave the job rather than pursue the matter with the police, because police is likely to disbelieve them; and the police and court proceedings are time consuming. Illiteracy is the key factor for human right violations among domestic workers. Government, legislature and judiciary should take stringent measures for the eradication of all atrocities against domestic workers. A comprehensive legislation is the need of the hour. The following are some of the suggestions for reforming the law:

- ❖ The government shall enact Central and State legislations for the social security and welfare of the domestic workers.
- ❖ The legislation shall contain stringent provisions for registration of domestic workers and placement agencies by the State government.
- ❖ No person below 18 years of age shall be allowed to register except according to the special laws in this respect.
- ❖ Resident women workers shall take special registration and make periodical renewal mandatory. Safe and secure place of stay, quality food, sufficient period of rest, weekly off etc. shall be provided.
- ❖ The employer shall be liable for the non-registration and lacunae in providing social security benefits.
- ❖ Post offices, banks and NGO’s shall be entrusted with accepting the registration forms. Copy of registration form shall be forwarded to the Welfare Officer, specially constituted under the provisions of law.
- ❖ All payments, including wages, payments to social security schemes shall be made through Bank.
- ❖ Wage shall be fixed according to the hours of work and shall be paid weekly, bi-weekly or monthly.
- ❖ The provisions of minimum wages shall be applicable to all domestic workers.
- ❖ Enhance compensation for human right violations against the house owner or job provider.
- ❖ Mobile tracking facility for finding workers and random interaction with the officials. Provide Help desk facility by the government or voluntary organisations.
- ❖ Domestic workers who are involved in crimes should be removed from muster roll and details of the convicted persons shall be published in the official web-site.
- ❖ Periodical awareness programme shall be given to the domestic workers. Make them vigilant about the human right protection laws and the Constitutional provisions.
- ❖ Fix minimum educational qualification for domestic workers working abroad.
- ❖ Job providers shall be registered as per the law.
- ❖ Punishments shall be given for illegal recruitment of domestic workers. Official web-site shall contain the details of the job providers.

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<sup>46</sup> *Ibid.*



- ❖ Constitution of vibrant trade union for the protection of rights of domestic workers is the need of the hour.
- ❖ Timely revision of methods/techniques and assumptions incorporating field level realities can help a long way in evolving meaningful ways of organising the unorganised.<sup>47</sup>
- ❖ SEWA (Self Employed Women Association), a women fish workers trade union, model trade union is desirable.<sup>48</sup>

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<sup>47</sup> Babu P. Ramesh, *Shifting Trajectories: Work Organisation, Labour Relations and Mobilisation in Contemporary India*, (V.V Giri National Labour Institute, Noida, 2008), p.84

<sup>48</sup> Nalini Nayak, "Organizing the Unorganized Workers: Lessons from SEWA Experiences" 48 (3) *Indian Journal of Industrial Relations* 402-414 (2013)