

IN THE HIGH COURT OF KARNATAKA
AT BENGALURU
W.P. No. 2563 /2021 (PIL)

Between:

Domestic Workers Rights Union ... Petitioner

And:

Union of India and Ors. ... Respondents

LIST OF DATES AND SYNOPSIS

Date	Events
16.05.2009	Unorganised Workers' Social Security Act, 2008 came into effect.
28.10.2009	Unorganised Workers' Social Security (Karnataka) Rules, 2009 came into force
03.09.2010	The Domestic Workers Joint Action Committee, which includes the Petitioner Union, submitted a Memorandum seeking that domestic workers be covered under the schemes of the Karnataka Government.
25.02.2016	Pursuant to the "Guidelines for Protection of Women and Children against Trafficking" issued by the Government of Karnataka the Hon'ble Court held that the Government shall act in the letter and spirit of the said guidelines.
27.04.2016	The Petitioner Union issued a representation to the Labour Commissioner, Bangalore seeking that an order be given for registration for all placement agencies. No action was taken on the same.
16.08.2017	The Petitioner Union issued letter dated 16.08.2017 to the Labour Secretary wherein the Union noted that action had been promised in respect

11.01.2018	The Hon'ble Supreme Court in the case of <i>Shramjeevi Mahila Samito v. State of NCT of Delhi and Anr</i> passed an order directing the process of registration be started by February 2020, including registration, issuance of Identity Cards and extension of benefits was passed.
19.02.2018	A letter was submitted to the Unorganised Workers Social Security Board by the Petitioner Union regarding the submission of 3000 applications for registration.
15.05.2018	The Hon'ble Supreme Court in the case of <i>Shramjeevi Mahila Samito v. State of NCT of Delhi and Anr</i> passed an order directing that the Central Government shall not disburse any further grants to the States, which have not registered the domestic workers was passed.
28.05.2018	The Petitioner Union sought information regarding the provision of smart cards in a representation wherein it was stated that around 800 domestic workers had submitted applications for smart cards under the Ambedkar Haste Scheme.
03.08.2018	Another letter regarding submission of 1300 applications was submitted by the Petitioner Union
21.08.2018	The Hon'ble Supreme Court in the case of <i>Shramjeevi Mahila Samito v. State of NCT of Delhi and Anr</i> passed an n order directing the Chief Secretary of all the States and Administrators of all the Union Territories to start registering 10% of all the estimated number of workers every month starting from the month of January 2019.
07.02.2019	The Ministry of Labour and Employment responded to an Unstarred Question No. 4354 giving details of the formulation of a National Policy on Domestic Workers which was being considered. However, no such policy is in force till date.

31.03.2019	The independent auditor's report of the Karnataka State Unorganised Workers Social Security Board shows that there is no shortage in funds.
30.07.2019	The Ambedkar Karmika Sahaya Hastha Sceheme official website was updated and stated that 60,763 unorganised workers were received. However, no smart card has been issued for 35,700 applications.
10.02.2020	The Petitioner issued a representation to the Labour Commissioner stating that in the past 9 years, more that 3500 applications for registration and smart cards had been filed by the Petitioner, of which only approximately 500 smartcards had been issued. The Petitioner sought for all remaining cards to be issued.
23.03.2020	The Hon'ble Minister for Labour and Employment inaccurately stated that the National Sample Survey estimates, 39 lakhs people are employed as domestic workers by private households, of which 13 lakh are male and 26 lakh are female domestic workers. The real numbers of domestic workers are higher.
06.08.2020	A representation comprehensively raising the issued faced by domestic workers was submitted by the Petitioner Union to the Respondent No. 3.
06.01.2021	The Petitioner Union has issued a representation to the Unorganised Workers Social Security Board, Bangalore raising a number of issues faced by domestic workers, and seeking for an appointment to discuss holding of a tripartite workshop in this regard. No response was received for the same.
08.01.2021	The Unorganised Social Security Board issued a pamphlet regarding online registration of domestic workers.
Nil	No action has been taken on the repeated representations of the Petitioners. Hence, this Petition.

The Petitioner, Domestic Workers Rights Union, in a registered trade union of domestic workers across various districts in Karnataka, and is filing this petition in public interest drawing the attention of this Hon'ble Court to the plight of domestic workers

The Karnataka Government formulated the Unorganised Workers' Social Security Act, 2008 and the Unorganized Workers' Social Security (Karnataka) Rules, 2009 which provide for the registration of unorganised workers and provision of benefit under a number of schemes to them. However, despite applications having been filed by the Petitioner Union for registration of more than 3500 workers, of which only approximately 500 have been registered. There has been an absolute failure on the part of the Government to complete registration under the Act,. Moreover, even the domestic workers who have received smart cards under the Act have not received any benefits, and are unaware of the steps that have to be taken by them to receive benefits. None of the schemes are targeted to ensure the welfare of domestic workers and no additional scheme has been brought into force for the benefit of unorganised workers. The COVID-19 Pandemic devastated the lives of innumerable domestic workers and their families. Even then, domestic workers were not included in the welfare benefits announced by the Government.

Domestic workers have been included in the Minimum Wages Act, 1948 and the Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013. However, there has been a complete failure to ensure the implementation of these Acts. Migrant workers engaged through placement agencies fall under the ambit of the Inter State Migrant Workmen Act, 1979. Due to a lack of implementation, there is a widespread lack of compliance with this Act also and placement agencies continue to function unregulated, despite the mandate for regulation.

That there is a vacuum insofar as a specific law addressing the numerous issues faced by domestic workers is concerned

despite draft legislation and ILO Convention No. 89. It is sought that this Hon'ble Court be pleased to frame guidelines / direct the Respondents to frame guidelines to fill the vacuum.

Despite numerous representations from the Petitioner Union, the Respondents have failed to take action in regard to the statutory lapses and other grievances raised. Left with no option, the Petitioner is approaching this Hon'ble Court.

Hence this Petition.

Place: Bengaluru

Date:

Advocate for the Petitioner

Avani Chokshi

**IN THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU**

W.P. Nos. /2021 (PIL)

Between:

Domestic Worker Rights Union

#40B, 37th Cross, 28th Main Road,

Jayanagar 9th Block, Bangalore - 560009

Represented by its Joint Secretary

...Petitioner

And:

1. Union of India (www.barandbench.com)

Represented by its Secretary

Ministry of Labour and Employment,

Shakti Bhawan, Rafi Marg,

New Delhi, Delhi 110001

2. State of Karnataka

Represented by the Principal Secretary

Department of Labour

Vikasa Soudha,

Bengaluru.

3. Commissioner, Labour Department

Karmika Bhavan, Dairy Circle, Bannerghatta Road,

Bangalore-29.

4. State of Karnataka

Represented by the Principal Secretary,
 Department of Women and Child Development
 1st floor, M.S. Building, Dr. B.R. Ambedkar Veedhi,
 Bangalore-01, India

5. Karnataka State Unorganised Workers Social Security Board

Represented by its Chairperson
 3rd Floor, Kalyana Suraksha Bhavan,
 Dairy Circle, Bannerghatta Road,
 Bengaluru-560029

...Respondents

**MEMORANDUM OF PETITION UNDER ARTICLE 226 OF THE
 CONSTITUTION OF INDIA**

Bar & Bench (www.barandbench.com)

The Advocate for the Petitioner submits as follows:

1. The address of the Petitioner for the purpose of service of summons, notices, etc. from this Hon'ble Court are as stated in the cause title, and that of their Counsels, Maitreyi Krishnan, Raghupathi S., Clifton D' Rozario, Shilpa Prasad and Avani Chokshi and, having their offices at "Manthan Law", No. 18, 1st Floor, Bharat Bhawan, No. 35, Infantry Road, Bengaluru – 560001. The addresses of the respondents for the same purpose are as stated in the cause title.
2. The Petitioner, Domestic Workers' Rights Union, is a Union registered under the Trade Union Act, 1926, with Registration Number 2/DRT/CR-26/2012 with a membership of more than 8000 domestic workers across various districts in the State of

Karnataka. The union was part of the tripartite committee of Karnataka State Unorganised Workers Social Security Board from 2009 to 2012. The Petitioner has been working on the issues faced by domestic workers for over several years and has also been involved in unionising workers to realise their rights. The Petitioner is before this Hon'ble Court with this Public Interest Litigation, drawing its attention to the plight of domestic workers in the State of Karnataka, and seeking for appropriate relief in this regard.

3. It is submitted that domestic workers as a sector have always remained invisible and have not been considered as productive workers. Not only is there a lack of a comprehensive legislation protecting their rights, but also any existing benefits/safeguards have failed to be implemented. Consequentially, domestic workers, who constitute a significant proportion of the working class, are not provided any protections in law and face discrimination, abuse, exploitation, non-payment of minimum wages, sexual harassment, forced labour and, trafficking amongst other serious issues. The lack of regulations and the inadequate enforcement of existing protections, resulting in poor wages and lack of any basic labour rights, compels domestic workers into taking up employment in as many as 3-5 households a day so as to earn sufficient wages and look after their families. There also continues to be a massive prevalence of forced labour and trafficked migrant workers in the form of live-in domestic workers.

4. It is submitted that in response to a question in respect of domestic workers in the Lok Sabha, the Hon'ble Minister for Labour and Employment had stated on 23.03.2020 that per National Sample Survey (NSSO Statistics-2011-2012, 68th round) estimates, 39 lakhs people are employed as domestic workers by private households, of which 13 lakh are male and 26 lakh are female domestic workers. However, the Petitioner Union estimates that these numbers are inaccurate and the real numbers of domestic workers are much higher. It is estimated that there are at least 4 lakh domestic workers in the city of Bengaluru alone. Pertinently, a significant population of the women inhabitants of slum areas the city is migrant workers employed as domestic workers.
5. Pertinently, there are several categories of domestic workers, including part-time domestic workers, full-time domestic workers, in-house, domestic workers, migrant domestic workers and domestic workers who are employed for particular chores, including cooking, cleaning, nannies. The instant petition relates to all categories of domestic workers, including child domestic workers.
6. It is pertinent to keep in mind that a vast majority of domestic workers are from socially oppressed and backward sections of society, including Dalits and face additional caste discrimination. Pertinently, an article by Dr M Madhumathi titled 'Migration for Domestic Work – A case of Female Domestic Workers in Bangalore' reported that the caste distribution in of domestic workers in Bangalore showed that a

majority of them belongs to downtrodden sections of the society, comprising of 75% Scheduled Caste, 15% Other Backward Castes, 8% Scheduled Tribe and 2% other castes. A true and correct copy of the article by Dr M Madhumathi titled 'Migration for Domestic Work – A case of Female Domestic Workers in Bangalore', published in the International Journal of Social Science & Interdisciplinary Research, Vol. 2(1), January 2013 is produced herewith and marked as **Annexure A**.

7. It is submitted that members of the Petitioner Union have reported that a number of discriminatory, feudal and casteist practice continue to be experienced by them, including but not limited to the following:
 - a. Use of word "servant" to refer to domestic workers
 - b. Demands that domestic workers should not be seen in public spaces in apartment complexes
 - c. Orders to not use the toilets in the residences
 - d. Orders to not use the common lifts and common areas in apartment complexes, gated communities, etc.
 - e. Orders to not use the plates and glasses of the members of the residences and separate plate/glass is kept for the workers.
 - f. Orders to not sit on the chairs, but to sit on the ground
 - g. Spoken and treated in a disrespectful matter
8. It is submitted that the domestic worker sector falls within the ambit of the Unorganised Worker Social Security Act, 2008 (hereinafter, the Act) and the Rules framed thereunder in the State of Karnataka, namely, the Unorganised Workers' Social

Security (Karnataka) Rules, 2009, (hereinafter, the Rules) which provide for the registration of unorganised workers and provision of benefit of number of schemes to them.

9. It is submitted that the Act was brought into force with the stated objective to provide for the social security and welfare of unorganised workers and for other connected and incidental matters. The scheme of the Act provides in section 3(1) that the Central Government must, and the State Government may, formulate suitable welfare schemes for the benefit of the unorganised workers on enlisted topics. The schemes listed in Schedule I of the Act are deemed to be schemes under section 3(1). These schemes in schedule I of the Act are either general in nature (for example, the Indira Gandhi National Old Age Pension Scheme), or targeted towards a particular category of unorganised worker (For example, the Handloom Weavers' Comprehensive Welfare Scheme). There is no specific and targeted scheme for the benefit of domestic workers at the Central or State level.

10. It is submitted that in response to a question in respect of domestic workers in the Lok Sabha, the Hon'ble Minister for Labour and Employment had stated on 23.03.2020

"The Central Government is already implementing Unorganised Workers' Social Security Act, 2008, to provide social security relating to life and disability cover, health and maternity benefits, old age protection to the unorganised workers including domestic workers. Various Ministries/Departments of the Central Government are

implementing such social security schemes like National Old Age Pension Scheme (Ministry of Rural Development); National Family Benefit Scheme (Ministry of Rural Development); Janani Suraksha Yojana (Ministry of Health and Family Welfare), Ayushman Bharat (Ministry of Health and Family Welfare). In addition to the above welfare schemes, 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 for the age group of 18 to 50 years depending upon their eligibility. Converged PMJJBY gives coverage of Rs2 lakhs on death at premium of Rs. 330/- per annum for an age span from 18 to 50 years. Converged PMSBY gives coverage of Rs. 2 lakhs on accidental death and disability at premium of Rs. 12 per annum. These converged schemes of PMJJBY/PMSBY are being implemented by Ministry of Labour & Employment through Life Insurance Corporation of India. The annual premium is shared on 50:50 basis by the Central Government and the State Governments. Domestic Workers have also been included as a specific category of workers (with home as the workplace) in the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act (2013)."

A true and correct copy of the Unstarred Question No. 4734

dated 23.03.2020 regarding Women Domestic Workers in the Lok Sabha is produced herewith and marked as **Annexure – B.**

11. It is therefore submitted that as per the First Schedule of the Act, (excluding targeted schemes and including merged/ updated schemes) the following schemes are deemed to be applicable to unorganised workers under the Act.

Sl. No.	Scheme	Benefit
1.	Indira Gandhi National Old Age Pension Scheme (Ministry of Rural Development)	Under the scheme, BPL persons aged 60 years or above are entitled to a monthly pension of Rs. 200/- up to 79 years of age and Rs. 500/- thereafter.
2.	National Family Benefit Scheme (Ministry of Rural Development);	Under the scheme a BPL household is entitled to lump sum amount of money on the death of primary breadwinner aged between 18 and 64 years. The amount of assistance is Rs. 10,000/-.
3.	Janani Suraksha Yojana (Ministry of Health and Family Welfare)	Janani Suraksha Yojana (JSY) is a safe motherhood intervention with the objective of reducing maternal and neonatal mortality by promoting

		institutional delivery among the poor pregnant women through cash assistance and delivery and post delivery care.
4.	Converged Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) (Ministry of Labour & Employment)	Life and disability coverage of R. 2 lakhs to unorganised workers for the age group of 18 - 50 years
5.	Rashtriya Swasthya Bima Yojana (Ministry of Labour and Employment)	Health insurance coverage for Below Poverty Line (BPL) families in the unorganised sector, and provides for inpatient healthcare benefits for the insured workers and their families. A copy of the webpage on Rashtriya Swasthya Bima Yojana published on the website of the Government of India is produced herewith and marked as Annexure – C.

It is clear that none of these schemes are targeted to ensure the welfare of domestic workers.

12. It is submitted that it is clear that is no additional scheme brought into force for the benefit of unorganised workers that

will help ensure the welfare of domestic workers.

Registration under the Unorganized Workers Social Security Act, 2008

13. It is submitted that one of the main issues being faced by domestic workers is the inability to register themselves under the Act. The Unorganised Workers Social Security Board has been given the function of reviewing the progress of registration and issuance of cards to unorganised sector workers.
14. It is submitted that in 2008, the Unorganised Workers' Social Security Act, 2008 was passed by the Central Government. Some salient features of the Act are as follows:
 - a. Section 2(m) defines "Unorganised Worker" as meaning *"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"*
 - b. Section 3 mandates the Central Government to formulate and notify from time to time suitable welfare schemes for unorganised workers, and provides that the schemes in the Schedule 1 to this Act will be deemed to be welfare schemes under this section. It also states that the State Government may formulate and notify, from time to time, suitable welfare schemes for unorganised workers.
 - c. National and State Social Security Boards with representation from *inter alia*, unorganised sector workers

and employers are constituted in Sections 5 and 6.

d. *Section 10 provides*

"10(1) Every unorganised worker shall be eligible for registration subject to the fulfillment of the following conditions, namely:

(a) he or she shall have completed fourteen years of age; and

(b) a self-declaration by him or her confirming that he or she is an unorganised worker.

10 (2) Every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration.

(3) Every unorganised worker shall be registered and issued an identity card by the District Administration which shall be a smart card carrying a unique identification number and shall be portable."

e. *Schedule I of the Act contains a list of schemes that are deemed to be welfare schemes under section 3.*

15. It is submitted that the Karnataka Government has formulated the Unorganised Workers' Social Security (Karnataka) Rules, 2009. The said Rules provide for a term of office of members of upto 3 years (*Rule 3*), mandates meetings of the Board at least once every three months (*Rule 9*). *Rule 12* provides for registration of unorganised workers in the following terms :

"12. Registration of Unorganised Workers.—

(1) The unorganised workers belonging to the categories as notified by the Government from time to

time, shall apply in Form I to District Administration along with Age Certificate in Form III subject to the fulfilment of the following conditions, namely.—

(i) The worker shall comply with Section 2(l) and 2(m) of the Unorganised Workers' Social Security Act, 2008.

(ii) The Registering Authority shall satisfy that the applicant has complied with the provisions of Section 2(l) and 2(m) of Unorganised Workers' Social Security Act, 2008 and he shall collect registration fee of Rs. 25/- in cash from the worker and register such worker as beneficiary of the Schemes of the Board and shall issue him/her a smart card and a receipt for the same.

(2) (i) Every registered worker shall submit an application of annual subscription of beneficiary in Form II to District Administration along with a yearly contribution of Rs. 100/-, which shall be remitted either to Bank Account of the Board or Cash or IPO or DD or Cheque obtained and payable in Bangalore in the name of the Member-Secretary of the Board.

(ii) In case, a beneficiary commits default in the payment of contribution for the next or subsequent year, he shall not be entitled for any benefits. But, with the permission of the Member-Secretary or an officer authorised by him on this

behalf and after satisfying the officer that the non-payment of contribution was for the reasons beyond his control, or for reasonable grounds, he shall be continued as a beneficiary on payment of Rs. 2 per month. This benefit shall be allowed to the beneficiary not more than twice, after which he shall cease to be a beneficiary.

(3) The Registration of an unorganised worker shall be cancelled by the Registering Authority if such authority is satisfied that the registration has been obtained by false statement/declaration or by suppression of facts, after giving an opportunity of being heard to the registered worker. Sufficient opportunity shall be provided to the affected worker by the Registering Authority to put forth his defence in the matter, before cancellation of his registration."

16. It is submitted that as early as 03.09.2010, the Domestic Workers Joint Action Committee, which includes the Petitioner Union, submitted a Memorandum seeking that domestic workers be covered under the schemes of the Karnataka Government. A true and correct copy of the Memorandum dated 03.09.2010 is produced herewith and marked as **Annexure – D.**
17. It is submitted that the Karnataka Government has come out with the Ambedkar Karmika Sahaya Hastha Scheme, which is a scheme framed under the Act, that provides for registration of unorganised workers of 11 categories, including domestic

workers, and issuance of smart cards. The Scheme provides for a Shrama Sammana Award, establishment of Karmika Seva Kendras in each taluk to assist with getting benefits and filling forms, and a Contributory Provident Fund Scheme. It is submitted that the webpage on Ambedkar Karmika Sahaya Hasta Scheme available on the official website of the labour department (labour.karnataka.gov.in/) updated on 30.07.2019 states that 60,763 unorganised workers applications were received out of which 25,063 smart cards were printed and distributed. It is apparent that as of 30.07.2019, there was a shortfall of 35,700 applications which have been received, but no smart card has been issued. A true copy of the webpage on Ambedkar Karmika Sahaya Hasta Scheme available on the official website of the labour department (labour.karnataka.gov.in/) updated on 30/07/2019 is produced herewith and marked as **Annexure – E**.

18. It is submitted that through the Union, more than 3500 domestic workers filed applications for registrations under the Unorganised Workers' Social Security Act, 2008 in Bengaluru, Belagavi and Mangaluru, under the Ambedkar Karmika Sahaaya Hasta Scheme. The lists collated by the Petitioner Union of numbers of domestic workers who have sought registration are produced herewith and marked as **Annexure – F**. However, till date only approximately 500 workers have been registered and received smart cards between 2018 and 2020. A copy of letter dated 19.02.2018 submitted by the Petitioner Union to the Unorganised Workers Social Security

Board regarding submission of 3000 applications for registration is produced herewith and marked as **Annexure – G**. A copy of letter dated 03.08.2018 submitted by the Petitioner Union to the Unorganised Workers Social Security Board regarding submission of 1300 applications for registration is produced herewith and marked as **Annexure – H**. The true and correct copy of one such smart card received by a member of the Petitioner Union is produced herewith and marked as **Annexure – J**. A copy of one such receipt dated 20.07.2019 given to the Petitioner Union in respect of 14 such smart cards received is produced herewith and marked as **Annexure – K**.

19. It is submitted that insofar as domestic workers are concerned, there has been an absolute failure on the part of the Government to initiate registration under the Unorganised Workers Act. It is imperative to recognize that unless there is proactive action on the Part of state agencies, the factual situation of domestic workers who are not organised precludes them from even knowing about the registration process, let alone having the resources to go through the process. It is for this reason that now, more than a decade since the passage of the Act, workers have still failed to be registered and receive benefits.
20. It is submitted that the Unorganised Workers Social Security Board recently issued a pamphlet regarding online registration of domestic workers, which was shared with the Petitioner union vide letter dated 08.01.2021, and a true and correct

copy of the same is produced herewith and marked as

Annexure – L.

21. It is submitted that even those domestic workers who have received smart cards under the Act have not received any benefits, and are unaware of any steps that have to be taken by them to receive benefits. No benefits have percolated to even the few members of the Petitioner Union who have received their cards.
22. That the Supreme Court has taken up the issue of registration of domestic workers under the Act in the case of *Shramjeevi Mahila Samiti v. State of NCT of Delhi and Anr*, S.L.P.(Cr.) No. 150/12, and has passed a number of relevant orders in the matter. Some of the relevant orders are as follows:
 - a. In Order dated 11.01.2018, the Hon'ble Supreme Court directed that process of registration be started by February 2020, including registration, issuance of Identity Cards and extension of benefits.
 - b. In Order dated 15.05.2018, it was held as follows, "*It is directed that the Central Government shall not disburse any further grants to the States, which have not registered the domestic workers*"
 - c. In Order dated 21.08.2018, it was held as follows, "*We direct the Chief Secretary 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 and submit a Report to this Court by 31.01.2019*"

True and correct copies of the Orders dated 11.01.2018, 15.05.2018 and 21.08.2018 passed by the Hon'ble Supreme court in the case of Shramjeevi Mahila Samiti v. State of NCT of Delhi and Anr, S.L.P.(Cr.) No. 150/12 are produced herewith and marked as **Annexure - M, Annexure - N, and Annexure - P** respectively.

23. It is submitted that the issue does not lie in shortage of funds. In fact, the independent auditor's report of the Karnataka State Unorganised Workers Social Security Board shows that the Board as on 31.03.2019 had a Capital Fund of Rs. 63,91,59,708/-. The report shows that in respect of the Ambedkar Karmika Sahaya Hastha Scheme, the Board had a balance of Rs. 9,99,04,800/ (Rupees Nine Crore Ninety Nine Lakh Four Thousand and Eight Hundred only), and was granted a further sum of Rs. 22,16,90,780/- (Rs. Twenty Two Crore Sixteen Lakh Ninety Thousand Seven Hundred and Eighty Rupees Only) in the FY 2018-19, and of this amount, only Rs. 6,38,49,419/- (Rupees Six Crore Thirty Eight Lakh Forty Nine Thousand Four Hundred and Nineteen only) were utilized as grants. Accounting for another amount transferred to administrative grants, the Board still had a balance of Rs. 24,43,81,161/ (Rupees Twenty Four Crore Forty Three Lakh Eighty One Thousand One Hundred and Sixty One Only) as on 31.03.2019. A true and correct copy of the independent auditor's report of the Karnataka State Unorganised Workers Social Security Board is produced herewith and marked as **Annexure - Q.**

24. It is submitted that apparently the Ministry of Labour & Employment is considering formulation of a National Policy on Domestic Workers which is in the draft stage. The salient features of the proposed draft National Policy on Domestic Workers are as under:-

- a. Inclusion of Domestic Workers in the existing legislations
- b. Domestic workers will have the right to register as unorganized workers. Such registration will facilitate their access to rights & benefits.
- c. Right to form their own associations/unions
- d. Right to minimum wages, access to social security
- e. Right to enhance their skills
- f. Protection of Domestic Workers from abuse and exploitation
- g. Domestic Workers to have access to courts, tribunals for grievance redressal
- h. Establishment of a mechanism for regulation of private placement agencies.
- i. Establishment of a grievance redressal system for domestic workers.

However, till date, no such policy is in force. It is submitted that the said details were given by the Minister of Labour and Employment in the Lok Sabha on 07.02.2019 in response to Unstarred Question No. 4354, and a copy of the said answer is produced herewith and marked as **Annexure – R.**

Impact of the Lockdown and increase in vulnerability

25. It is submitted that domestic workers have faced the brunt of the lockdown that was imposed subsequent to the outbreak of COVID-19, including an exacerbation of discriminatory practices and severe financial insecurity, and continue to face numerous issues as a result. The Petitioner Union, along with the Bruhat Bangalore Gruhakarmika Sangha (BBGS) and the Manegelasa Kaarmikara Union, has come out with a report dated 16.06.2020 entitled "*The COVID-19 Pandemic and the Invisible Workers of the Household Economy*". The said report contains a detailed discussion of the issues faced by domestic workers. Some of the salient points include:

- a. An estimated 4 lakh domestic workers live and work in the city of Bengaluru, a majority of whom are women. The large majority of these women work in multiple households, keeping long hours, facing caste discrimination, assault on their dignity through rude comments from their employers, no social security, and no legal rights as other formal workers like regular leave and bonus.
- b. During the phase of strict imposition of the first lockdown, covering the time from 24.03.2020, domestic workers were unable to work. They still had to pay house rent, electricity bills, water bills, monthly expenses for food, without any source of income. With rent and bills to pay most of them could barely manage one meal a day.
- c. A survey of 2396 domestic workers in Bengaluru presented the following results:

- i. About 87% of the workers were told not to come for work since the lockdown in March and were not sure if and when they would be called to work again.
- ii. 91% of workers lost their salaries for the month of April.
- iii. 50% of all workers above the age of 50 lost their jobs during the lockdown
- iv. The period of relaxation of the lockdown saw Residential Welfare Associations (RWAs) issuing directives that are very insulting and demeaning to domestic workers.
- v. RWAs forcing employers who take domestic workers back in employment to sign a declaration that they will be responsible for the health of all the residents if they take their domestic worker back to work.
- vi. Several RWAs have issued advisories to residents to ask the domestic workers to minimize or avoid usage of the lift and take the stairs instead. Such discrimination implies that domestic workers are unhygienic or less careful about their health.
- vii. RWAs have been seen to discourage domestic workers from waiting in the common areas.
- viii. Residents were requested to collect the address details of their domestic workers and share it with the management committee and facility manager, in violation of their right to privacy.

A true and correct copy of the report dated 16.06.2020 entitled

"*The COVID-19 Pandemic and the Invisible Workers of the Household Economy*" issued by the Petitioner Union, along with the Bruhat Bangalore Gruhakarmika Sangha (BBGS) and the Manegelasa Kaarmikara Union, is produced herewith and marked as **Annexure – S.**

26. It is submitted that the Hindu newspaper published an article dated 15.06.2020 titled "*91% of domestic workers not paid during lockdown: Survey*" covering the aforesaid report and a subsequent sit in protest held by the members of the Union. The article quotes domestic workers who have reported being paid only half salary for the same work during this period, and records the demands of the members of the Petitioner for registration of domestic workers. A true and correct copy of the article dated 15.06.2020 titled "*91% of domestic workers not paid during lockdown: Survey*" published in the Hindu newspaper is produced herewith and marked as **Annexure – T.**

27. It is submitted that the BBC published a report dated 02.06.2020 titled '*Coronavirus: The 'tin pot' RWA dictators running life in India's cities*', reports that many RWAs are reluctant to let domestic workers in because "*they may bring in COVID-19 into our complexes too*". The report notes that some RWAs required resident employers to fill out a form certifying that their help was "*healthy and has no COVID-19 related symptoms*". The article notes that an RWA has locked up the closest exit to the apartment, forcing workers to walk through containment zones, and reports videos of a worker being

forced to walk up seven flights of stairs since the RWA would not allow her to take the lift. A true and correct copy of the BBC's report dated 02.06.2020 titled 'Coronavirus: The 'tin pot' RWA dictators running life in India's cities' is produced herewith and marked as **Annexure – U**.

28. It is submitted that the National Human Rights Commission issued an Advisory relating to Human Rights of Informal Workers during COVID-19 along with letter dated 05.10.2020 bearing DO No. R-17/11/2020-PRPP(RU-3) and requesting that all concerned authorities implement the recommendations made therein. The Advisory makes some specific comments regarding domestic workers, as follows:

"1.15 Domestic workers are required to be provided relief and be linked to Public Distribution System (PDS) and others schemes by registering them through police verification forms, Resident Welfare Association (RWA) records, and domestic workers' collectives."

"3.5 Domestic workers must not be discriminated against or looked at as "high risk" individuals. RWAs must be strongly notified not to take any discriminatory measures in the name of protection, e.g., RWAs cannot stop the domestic workers from "taking lifts" and using common areas for waiting. Guards and facility managers must be trained in treating domestic workers with due respect. Proper training on physical distancing must be provided by the facility management or employers to the domestic workers, along with face

masks, gloves, and hand sanitizers.”

It is submitted the Advisory also makes recommendations regarding provisions of social security to all workers in the following terms:

"1.30. Fast-track setting up of unorganised sector board (National Social Security Board and State Unorganised Workers Board) and release of funds at the Central and State level. The appropriate Government may outline the functions and accountabilities of these Boards, including clear financing mechanisms and standards.

1.31. There is a need to form expert committees or empowered advisory committees to review the performance of all welfare boards in the country and suggest processes to make them more efficient and effective. This review process shall be done in a tripartite manner.

1.32. Ensure portability of entitlements and social security benefits to migrant workers and simplify the processes of accessing these entitlements, especially in disaster situations where people often lose their documents or are in no position to go through long and tedious processes.”

A true copy of the letter dated 05.10.2020 bearing DO No. R-17/11/2020-PRPP(RU-3) issued by the National Human Rights Commission along with the Advisory relating to Human Rights of Informal Workers during COVID-19 is produced herewith and marked as **Annexure - V**

29. It is submitted that in the context of the COVID-19 pandemic that devastated the lives of innumerable unorganised workers and their families, the Government of Karnataka has promised welfare benefits to various sectors of workers in the unorganised sector. In fact, as recently as 06.05.2020, it announced a relief package of Rs. 1610 crore to benefit of farmers, flower-growers, washermen, auto rickshaw and taxi drivers, weavers, building workers and barbers. The scheme provides for one time compensation to help those sectors in distress due to the lockdown. Another scheme has been initiated by the Karnataka Building and Other Construction Workers Welfare Board whereby registered construction workers get free bus passes with the BMTC. A true and correct copy of article dated 06.05.2020 titled '*Karnataka announces 1610 crore relief package to labourers in unorganised sector*' published in the Deccan Chronicle is produced herewith and marked as **Annexure – W**. A true and correct copy of 'Assistance for free BMTC Bus Pass' details on the website are produced herewith and marked as **Annexure – X**. It is submitted that unfortunately, no such schemes have been introduced to benefit domestic workers.

Failure to ensure implementation of the Minimum Wages Act and the Prevention of Sexual Harassment at Workplace Act

30. It is submitted that domestic workers have been included in the Schedule to the Minimum Wages Act, 1948 as early as 2004, vide notification No. KAE 15 LMW 2004 dated

12.03.2004. Thereafter, it was revised vide notification No. KAE 17 LMW 2010 dated 25.01.2011, and again vide notification No. KAE 1 LMW 2015 dated 16.09.2016. Despite the mandate of the Minimum Wages Act that minimum wage notifications be revised at an outer limit of five years, in the 17 years since the first notification, the notification in regard to domestic workers has been revised only twice. The Minimum Wages Act in section 12 mandates payment of minimum wages as notified, including dearness allowance, without unauthorised deductions. Moreover, it provides for overtime payment at double rates and maintenance of records and registers. However, the Petitioner Union has observed an overall failure of employers to comply provisions of the Minimum Wages Act, 1948. In fact, though Minimum Wages for Domestic Helpers, Child Day Care Assistants, Home Nurses Including Domestic Workers between 01.04.2019 to 31.03.2020 range from Rs. 11,303 to Rs. 14,033 per month, in practice, wages vary, but fall well under the notified minimum wage. Due to the surplus labour available, domestic workers are willing to work for less than the minimum wage and are unwilling to file complaints in regarding non-payment of minimum wage, though the same amounts to forced labour. In fact, the Act contemplates such a situation and seeks to remedy the same by granting full powers of inspection to those appointed as Inspectors under section 19 of the Minimum Wages Act, 1948, but practically, there have been no inspections of workplaces of domestic workers within the knowledge of the Petitioner Union. A copy of

the notified minimum wages and VDA for Residential Houses including Domestic Helpers, Child Care Assistants, Home Nurses and Allied Domestic in between 01.04.2020 to 31.03.2021 is produced herewith and marked as **Annexure – Y.**

31. It is submitted that there has been a total failure to implement the Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013, which explicitly includes domestic workers within its ambit, and recognizes dwelling places and houses as falling under the ambit of the term 'workplace'. The Preamble of this 2013 Act recognises that sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. The 2013 Act has therefore been brought into force with the stated objective to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. The 2013 Act specifically defines the term "domestic worker" in section 2(e) as meaning "a woman who is employed to do the household work in any household for remuneration whether in cash or kind either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer."

The Act makes lays down a grievance redressal framework. Importantly, section 19 of the Act lays down the duties of employers. Till date, though the Petitioner Union has had information of a number of instances of sexual harassment, it has struggled to get remedy for the same, despite managing to get FIRs registered in certain cases. Moreover, despite placement agencies falling within the definition of 'workplace' in section 2(o) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, to the best of the knowledge of the Petitioner, there are no instances of Internal Complaints Committees being constituted in placement agencies, leading to domestic workers who are not part of the Union having no real recourse in case of sexual harassment. There is blatant violation of section 19 of the 2013 Act, especially since the perpetrator of sexual harassment is most often the employer himself. Though Local Complaints Committee (LCC) have been constituted, they are unresponsive and are practically dysfunctional. In fact, the Petitioner submitted letter dated 20/10/2020 to the Chairperson, Local Complaints Committee, Bangalore, in respect of the sexual harassment of one security guard by another, regarding the failure to set up a Committee under the 2013 Act by the Security Agency and has not received any reply till date. A true and correct copy of the letter dated 20.10.2020 sent by the Petitioner to the Chairperson, Local Complaints Committee, Bangalore, is produced herewith and marked as **Annexure – Z.**

32. It is submitted that the article titled 'Migration for Domestic Work – A case of Female Domestic Workers in Bangalore' placed at Annexure A above reports that *'Sexual harassment is yet another serious issue faced by domestics. This is found to range from sexually coloured remarks/ gestures, unwanted physical contact, molestation and even rape. Growing job and income insecurities coupled with comparative social disadvantages add to the vulnerability of the domestics. The major cause domestic work becoming unpopular and unstandardised is the low social status attached to the occupation and the concentration of lower castes in it. The domestics have complained of being treated as a class apart, and the stigma of social inferiority was found among all the workers.'*

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33. It is submitted that Alternative Law Forum, Bangalore came out with a report titled 'Everyday Resistance: Life, Livelihood and Sexual Harassment', wherein an audit relating to sexual harassment prevalent in the sectors of domestic work and street vending was conducted. The findings of the report show rampant discrimination and harassment of domestic workers. The report states "... it must be noted that domestic workers are isolated in their workplace, which is an enclosed space, where the employer has no obligation to prevent or protect sexual harassment and are often the perpetrators themselves. Domestic workers are vulnerable with no one to turn to for help during times of distress". A true and correct copy of relevant excerpts of the report titled 'Everyday Resistance:

Life, Livelihood and Sexual Harassment' published by the Alternative Law Forum, Bangalore are produced herewith and marked as **Annexure – AA**.

Failure to regulate placement agencies

34. That a large number of domestic workers are engaged through placement agencies, which recruit migrant workers from other states for employment in Bengaluru city. That these workers would fall under the ambit of the Inter State Migrant Workmen Act, 1979, but due to ineffective implementation of this Act, there is a widespread lack of compliance with its provisions. The agencies, which act as contractors for the purpose of recruitment and placement, are often not licenced under the provisions of the Act, and the mandatory duties of the agencies, including issuance of passbook with particulars, are not complied with, and agencies remain by and large unregulated.
35. That the Government of Karnataka has issued Government of Karnataka, issued "Guidelines for Protection of Women and Children against Trafficking", which impose a number of responsibilities upon the Department of Women and Child Welfare, the Legal Services Authority, the Labour Department, the Health Department, and the Police Department. That the said Guidelines note that:

"All resident welfare associations (RWAs), building associations of apartment complexes, cooperatives etc to ensure against engaging children as domestic

workers and also to ensure that domestic workers being employers are being done so not against their wishes."

"The Labour Department should conduct raids of such apartment complexes to immediately bring the situation under control, so as to provide respite to the helpless children and women trapped in these residents..."

"Persons engaged in labour contract should be identified and a database should be prepared of such contractor and sub-contractors.."

"Labour Department will register all placement agencies in accordance with the Circular issued by the Department of Labour, Government of Karnataka dated 24/11/2014 bearing No. ECL-1/CR-19/2014-15.."

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True and correct copy of "Guidelines for Protection of Women and Children against Trafficking" issued by Government of Karnataka is produced herewith and placed as **Annexure – AB.**

36. That the failure to implement the said guidelines has resulted in the placement agencies continuing to function unregulated. That despite the issuance of the guidelines, the Union regularly encounters cases of trafficking and has helped victims pursue criminal remedies in some cases. Unfortunately, the widespread engagement of live-in migrant workers as domestic help has invisibilised the trafficking. That the Resident Welfare Associations have failed to comply with their mandate under

the aforesaid guidelines, leading to a lack of internal regulation of such instances of trafficking. That further, there has been no push from the Labour Department to ensure implementation of the said guidelines to the best of the knowledge of the Petitioner.

37. That pursuant to the issuance of the said guidelines, this Hon'ble Court vide Order dated 25.02.2016 in W.P. No. 29572/2014 held as follows:

"The Government, in consultation with the various stake- holders including the petitioner's learned advocate, has come out with the circular, dated 24.11.2014 containing the guidelines for protection of the women and children against trafficking. I place on record my appreciation of the pro-active and responsive approach of the Government. The Government shall act in the letter and spirit of the said circular."

A true and correct copy of the Order of this Hon'ble Court dated 25.02.2016 in W.P. No. 29572/2014 is produced herewith and placed as **Annexure – AC**.

Steps taken by the Petitioner Union

38. It is submitted that the Petitioner Union has been active for more than a decade, organising domestic workers and seeking to address the numerous issues faced by those working in the sector.
39. The Petitioner has actively been seeking for registration of workers and provision of benefits to them. The Petitioner Union

had submitted letter dated 19.10.2012 to the Commissioner of Labour, Bangalore mentioning that 1340 applications had been made for registration under the Rashtriya Swasthya Bima Yojana. As part of the Forum for Unorganised Workers' Social Security, the Petitioner had also submitted representation dated 05.08.2016 raising a number of issues in regard to the implementation of the Act. The Petitioner Union had submitted letter dated 16.08.2017 to the Labour Secretary wherein the Union noted that action had been promised in respect of:

- a. Smart cards and relevant benefits
- b. Workshop on the urgent issue of migrant live in domestic workers, trafficking and placement agencies
- c. Social security Board and mechanism for grievances.

The Petitioner Union also sought for information regarding provision of smart cards in representation dated 28.05.2018 wherein it was stated that around 800 domestic workers had submitted applications for smart cards under the Ambedkar Haste Scheme. Moreover, the Petitioner Union recently submitted representation dated 10.02.2020 to the Labour Commissioner stating that in the past 9 years, more that 3500 applications for registration and smart cards had been filed by the Petitioner, of which only 500 smartcards had been issued, and seeking for all remaining cards to be issued. The representation goes on to say that there is no information on what benefits will be received by those with smart cards, and that workers who contribute to the economy of the country are being deprived of benefits. The representation prays that

benefits such as those given by the Building And Other Construction Workers Welfare Board, including health insurance, maternity benefits and educational expenses be provided to domestic workers. On 06.08.2020, again a representation comprehensively raising the issues faced by domestic workers was submitted by the petitioner Union to the Respondent No. 3 hereing True and correct copies of the letters submitted by the Petitioner Union dated 19.10.2012, 05.08.2016 16.08.2017, 28.05.2018 and 10.02.2020 are produced herewith and marked as **Annexure – AD, Annexure – AE, Annexure – AF, Annexure – AG, Annexure - AH** and **Annexure – AJ** respectively.

40. That following the failure of the Labour Department to register placement agencies as mandated by the said guidelines, the Petitioner Union submitted representation dated 27.04.2016 to the Labour Commissioner, Bangalore seeking that an order be given for registration of all placement agencies. However, to the best of the knowledge of the Petitioner Union, no action was taken on the same. That however, the Government has failed to implement the said guidelines, and further failed to take action insofar as the representation dated 27.04.2020 submitted by the Petitioner seeking registration of Placement Agencies. A true and correct copy of the representation dated 27.04.2016 submitted by the Petitioner Union to the Labour Commissioner is produced herewith and marked as **Annexure – AK.**
41. That as recently as 06.01.2021, the Petitioner Union has

submitted a representation to the Unorganised Workers Social Security Board, Bangalore, raising a number of issues faced by domestic workers, and seeking for an appointment to discuss holding of a tripartite workshop in this regard. However, no response has been received to this representation till date. A true and correct copy of the representation dated 06.01.2021 sent by the Petitioner Union to the Unorganised Workers Social Security Board, Bangalore is produced herewith and marked as **Annexure – AL.**

42. That despite having submitted numerous representations to the Respondents seeking the implementation of various provisions of law as well as that steps be taken for the welfare of the vulnerable domestic worker section, no action has been taken. Having no alternative remedy, the instant petition has been preferred.
43. The Petitioner has not presented any other Writ Petition before this Hon'ble Court or any other Forum on the same cause of action. The Petitioner, having no other efficacious or alternate remedy has approached this Hon'ble Court by presenting this Writ Petition under Article 226 of the Constitution on the following among other grounds:

GROUND

44. That Section 3 and 10 of the Act and Section 12 of the Rules issue a mandate upon the Registering Authority to issue a smart card and receipt to all those unorganised workers who

have complied with the requisite conditions.

45. That in terms of the Ambedkar Karmika Sahaya Hastha Scheme, 11 categories of workers, specifically including domestic workers, are entitled to be registered and issued with smart cards in Karnataka.
46. That despite the aforesaid mandate, the Board has absolutely failed to register workers who have sought registration. As shown above in Annexure - E, even as per official data there is a shortfall of 35,700 applications received for which no smart cards have been issued as on 30.07.2019. Moreover, there is a lack of transparency and accountability in its functioning, insofar as funding is concerned and the Petitioner Union has been unable to gain any solid assurance regarding provision of smart cards, despite numerous representations. That even those workers who have received smart cards under the Act have not been provided with any benefits under the schemes and are unaware of the welfare schemes that ought to accrue to those registered under the Act.
47. That the Ambedkar Karmika Sahaya Hastha Scheme, also provides for establishment of Karmika Seva Kendras in each taluk to assist with getting benefits and filling forms. However, these Seva Kendras have been ineffective in enabling registration and getting benefits. That the scheme also contemplates a Contributory Provident Fund Scheme. It is submitted that the webpage on Ambedkar Karmika Sahaya Hasta Scheme available on the official website of the labour department (labour.karnataka.gov.in/) updated on 30.07.2019

states that 60,763 unorganised workers applications were received out of which 25,063 smart cards were printed and distributed. It is apparent that as of 30.07.2019, there was a shortfall of 35,700 applications, which have been received, but no smart card has been issued.

48. That the audits of the Respondent No.5 Board (placed above as Annexure – Q) makes it clear that as on 31.03.2019, the Board had balance amount of Rs. 24,43,81,161/ (Rupees Twenty Four Crore Forty Three Lakh Eighty One Thousand One Hundred and Sixty One Only) available with it. However, till date, members of the Petitioner Union have not seen provision of any welfare facilities as contemplated by the Act.
49. That the failure of the State to register domestic workers under the Act has resulted in more than 4 lakh domestic workers in Bangalore city, and many more across the State standing neglected, without jobs, and without economic and social security, especially during this pandemic period.
50. That insofar as workers in the unorganised sector are concerned, it would be a futile to permit registration and provision of benefits without proactively informing and assisting workers to avail the same. Despite 12 years having passed since the enactment of the statute, domestic workers as a sector have failed to see any benefit from the same.
51. That the casteist, feudal and discriminatory practices imposed on domestic workers including use of separate utensils and prohibition of use of toilets amount to practice of untouchability, which has been abolished in Article 17 of Part

III of the Constitution of India. It may be noted that the prohibition of use of public spaces also often amounts to a violation of Section 3(1)(y) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, given the fact that domestic workers are predominantly from the Dalit or SC/ST community.

52. That domestic workers across the state have faced the brunt of the lockdown, including non-payment of wages, an massive increase in casteist and discriminatory attacks, and massive economic instability at an individual level. Despite having introduced and implemented schemes to benefit other sectors of unorganised workers, the Government of Karnataka has failed to consider or address the financial plight of domestic workers.
53. That despite the issuance of the letter dated 05.10.2020 bearing DO No. R-17/11/2020-PRPP(RU-3) by the National Human Rights Commission along with the Advisory relating to Human Rights of Informal Workers during COVID-19 dealing specifically with the issues of domestic workers, no action has been taken in this regard, and domestic workers have faced the brunt of the lockdown and the COVID crisis.
54. That despite the numerous representations over the years from the Petitioner Organisation, the Respondents have failed to proactively engage with the plight of domestic workers. Though schemes have been issued for the benefit of workers in various other sectors, the domestic worker sector have been left high and dry, and have been arbitrarily excluded.

55. That the failure to enforce the Minimum Wages Act, 1948 has led to a situation where a majority of domestic workers are in employment amounting to forced labour under Article 23 of the Constitution of India. The settled law is that there cannot be a waiver of fundamental rights, and it is the positive duty of the State Government to ensure protection of their rights. That in fact, the Act facilitates this by granting full powers of inspection to those appointed as Inspectors under section 19 of the Minimum Wages Act, 1948, but practically, there have been no inspections of workplaces of domestic workers within the knowledge of the Petitioner Union.
56. That despite the fact that the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act (2013) specifically covers domestic workers within its ambit, the ineffective functioning of local complaints committees has resulted in the provisions of law being rendered valueless. Domestic workers, having no active support mechanism subsequent to facing harassment, usually are unable to report the incident, forcing them to face continuous harassment at the workplace. That there has been no compliance of the various provisions of the Act, including section 19 that provides for the duties of employers.
57. That pertinently, given the fact that domestic workers are predominantly from the Dalit or SC/ST community, sexual harassment of them amounts to a violation of Section 3(1)(w)(i) and Section 3(1)(w)(ii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

58. That there has been a blatant failure to regulate placement agencies, despite a vast majority of them falling within the ambit of the Interstate Migrant Workmen Act as also being required to be registered in terms of the Guidelines and the Circular issued by the Department of Labour, Government of Karnataka dated 24/11/2014 bearing No. ECL-1/CR-19/2014-15.
59. That the International Labour Organisation has adopted Convention No. 189 concerning decent work for domestic workers in the 100th annual session of the International Labour Conference, which is widely known as Domestic Workers Convention, 2011. The Convention stipulates legal hours of work and entitles domestic workers to paid annual leave, paid sick leave, maternity benefits, weekly rest periods (consecutive 24 hours of rest), overtime benefits, and minimum wages. The Convention also calls for the elimination of all forms of forced labour, abolition of child labour, and elimination of discrimination. It also demands safe and healthy working conditions for domestic workers. It specifically mentions that the workers payment should be made in cash and paid regularly. The Convention largely intends to provide domestic workers with fair and favourable conditions and social security measures at par with workers of other sectors. It sets certain standards for domestic work in the process of creating decent and dignified living conditions for the workers. In respect of live-in workers, the Convention calls for strict regulation of their stand-by working hours, to ensure that they

are not exploited. A true and correct copy of the ILO Convention 189 on 'Decent Work for Domestic Workers' is produced herewith and marked as **Annexure – AM**.

60. That in the case of Vishakha v State of Rajasthan [AIR 1997 SC 3011], the Hon'ble Apex Court laid down guidelines and norms specified for due observance at all work places or other institutions, until a legislation was enacted, while holding as follows,

"Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution...

" The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms fro construing domestic law when there is no inconsistency between them and there is a void in the domestic law."

61. That in the case of National Legal Services Authourity vs Union Of India, (2014) 5 SCC 438, the Hon'ble Supreme Court was

pleased to hold as follows:

Due to the absence of suitable legislation protecting the rights of the members of the transgender community, they are facing discrimination in various areas and hence the necessity to follow the International Conventions to which India is a party and to give due respect to other non-binding International Conventions and principles. Constitution makers could not have envisaged that each and every human activity be guided, controlled, recognized or safeguarded by laws made by the legislature. Article 21 has been incorporated to safeguard those rights and a constitutional Court cannot be a mute spectator when those rights are violated, but is expected to safeguard those rights knowing the pulse and feeling of that community, though a minority, especially when their rights have gained universal recognition and acceptance...

53. Article 51, as already indicated, has to be read along with Article 253 of the Constitution. If the parliament has made any legislation which is in conflict with the international law, then Indian Courts are bound to give effect to the Indian Law, rather than the international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law. In His Holiness Kesavananda

*Bharati Sripadavalvaru v. State of Kerala (1973) 4 SCC 225, it was stated that in view of Article 51 of the Constitution, the Court must interpret language of the Constitution, if not intractable, in the light of United Nations Charter and the solemn declaration subscribed to it by India. In Apparel Export Promotion Council v. A. K. Chopra (1999) 1 SCC 759, it was pointed out that domestic courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. Reference may also be made to the Judgments of this Court in Githa Hariharan (Ms) and another v. Reserve Bank of India and another (1999) 2 SCC 228, R.D. Upadhyay v. State of Andhra Pradesh and others (2007) 15 SCC 337 and People's Union for Civil Liberties v. Union of India and another (2005) 2 SCC 436. In Vishaka and others v. State of Rajasthan and Others (1997) 6 SCC 241, this Court under Article 141 laid down various guidelines to prevent sexual harassment of women in working places, and to enable gender equality relying on Articles 11, 24 and general recommendations 22, 23 and 24 of the Convention on the Elimination of All Forms of Discrimination against Women. **Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into those***

provisions, e.g., Articles 14, 15, 19 and 21 of the Constitution to enlarge the meaning and content thereof and to promote the object of constitutional guarantee. Principles discussed hereinbefore on TGs and the International Conventions, including Yogyakarta principles, which we have found not inconsistent with the various fundamental rights guaranteed under the Indian Constitution, must be recognized and followed, which has sufficient legal and historical justification in our country."

62. That it may be noted that in respect of the International Covenant on Civil and Political Rights (ICCPR), India had ratified that same with reservations. Whereas Article 9(5) of the ICCPR states that '*Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation*', India ratified that convention with the reservation, *inter alia*, that "*Further under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State.*" However, the Hon'ble Supreme Court in the case of *DK Basu v State of West Bengal* [(1997) 1 SCC 416] held that

"That reservation, however, has now lost its relevance in view of the law laid down by this Court in number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. (See with

advantage Rudal Shah Vs. State of Bihar [1983 (4) SCC 141].. There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of person liberty or life. [See: Nilabati Bahara Vs. State (Supra)]”

63. That hence it is clear that judicial interpretation can develop law even in terms of international treaties that have been ratified with reservations or have not been ratified, as well as use international treaties as tools of interpretation or to develop guidelines in cases of vacuums in law.
64. That moreover, the power of this Hon'ble Court to issue directions or guidelines in case of a statutory vacuum is well settled. In fact, the Apex Court in Union of India v. Association for Democratic Reforms (2002) 5 SCC 294, observed as follows:

"...It is not possible for this court to give any directions for amending the Act or statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the court can necessarily issue

directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted."

65. That despite draft laws having been prepared specifically on the issue of rights of domestic workers, none have been enacted. In fact, the Domestic Work Rights Campaign, of which the Petitioner Union is a part, had prepared a draft legislation and submitted the same to the National Commission for Women as early as 2010. That on 05.08.2016 a Private Member Bill termed the 'Domestic Workers Welfare Bill, 2016' was introduced in Lok Sabha, but has not been passed. A true and correct copy of the document titled 'Domestic Worker Legislation: A way Forward' containing the draft legislation prepared by the Domestic Workers Rights Campaign is produced herewith and marked as **Annexure – AN.**
66. Hence, there is a vacuum insofar as a specific law addressing the numerous issues faced by domestic workers is concerned. Hence, it is sought that this Hon'ble Court be pleased to frame guidelines / direct the Respondents to frame guidelines to be followed in respect of domestic workers along the lines of the ILO Convention No. 189 until any legislation is passed in this respect.
67. That despite various financial packages having been announced by the Government of Karnataka for the benefit of workers of the unorganised sector, the domestic worker sector has gone totally under the radar. Despite their valuable contribution, they have not received any benefits during the lockdown period or otherwise and are in deep distress as a result.

68. That under such circumstances, it is of vital importance that this Hon'ble Court take cognizance of the abysmal situation of domestic workers and the failure in implementation and grant the following prayers.

GROUND FOR INTERIM PRAYER

69. The Karnataka Government formulated the Unorganised Workers' Social Security Act, 2008 and the Unorganized Workers' Social Security (Karnataka) Rules, 2009 which provide for the registration of unorganised workers and provision of benefit under a number of schemes to them. However, despite applications having been filed by the Petitioner Union for registration of more than 3500 workers, of which only approximately 500 have been registered. There has been an absolute failure on the part of the Government to complete registration under the Act,. Moreover, even the domestic workers who have received smart cards under the Act have not received any benefits, and are unaware of the steps that have to be taken by them to receive benefits. None of the schemes are targeted to ensure the welfare of domestic workers and no additional scheme has been brought into force for the benefit of unorganised workers. The COVID-19 Pandemic devastated the lives of innumerable domestic workers and their families. Even then, domestic workers were not included in the welfare benefits announced by the Government.

70. Domestic workers have been included in the Minimum Wages Act, 1948 and the Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013. However, there has been a complete failure to ensure the implementation of these Acts. Migrant workers engaged through placement agencies fall under the ambit of the Inter State Migrant Workmen Act, 1979. Due to a lack of implementation, there is a widespread lack of compliance with this Act also and placement agencies continue to function unregulated, despite the mandate for regulation.
71. That there is a vacuum insofar as a specific law addressing the numerous issues faced by domestic workers is concerned despite draft legislation and ILO Convention No. 89. It is sought that this Hon'ble Court be pleased to frame guidelines / direct the Respondents to frame guidelines to fill the vacuum.

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PRAYERS

Wherefore, it is just, necessary, equitable and expedient that this Hon'ble Court may be pleased to grant the Petitioner the following reliefs:

1. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondent No. 5 to ensure registration of all domestic workers under the Unorganized Workers Social Security Act.
2. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the provision of benefits under all available schemes to all registered domestic workers or workers who have applied for registration and consider

bringing targetted schemes for the benefit of domestic workers into effect.

3. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondents No. 2-5 to widely publicise the provisions of the Unorganised Workers' Social Security Act, 2008 and the benefits available to the workers therein.
4. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the holistic implementation of Ambedkar Karmika Sahaya Hastha Scheme of the Government Karnataka (placed above as Annexure – E).
5. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondent No. 3 to issue an advisory to all RWAs and other resident bodies for implementation of provisions of Minimum Wage Act in respect of domestic workers, and to conduct regular surprise inspections to ensure effective implementation of the same as envisaged under section 19 of the Act.
6. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondent No. 2 to holistically implement the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 insofar as domestic workers are concerned, including but not limited to ensuring that all qualifying placement committees form Internal Complaints Committees as mandated under the said Act and Local Complaints Committees in each district are activated.

7. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondent No. 3 to register all placement agencies in accordance with the Circular issued by the Department of Labour, Government of Karnataka dated 24/11/2014 bearing No. ECL-1/CR-19/2014-15 and the "Guidelines for Protection of Women and Children against Trafficking" issued by Government of Karnataka" (placed as Annexure -AB)
8. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondents No. 2 and 3 to implement the "Guidelines for Protection of Women and Children against Trafficking" issued by the Government of Karnataka (placed above as Annexure - AB) especially insofar as registration of placement agencies is mandated.
9. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondent No. 1 to implement the letter dated 05.10.2020 bearing DO No. R-17/11/2020-PRPP(RU-3) by the National Human Rights Commission along with the Advisory relating to Human Rights of Informal Workers during COVID-19, (placed above as Annexure - V) especially para 1.15, 1.30, 1.31, 1.32, and 3.5, which are specially relevant for the instant petition.
10. It is prayed that this Hon'ble Court be pleased develop guidelines or, in the alternative, direct the State Government to frame guidelines, along the lines of the Domestic Workers Convention, (placed above as Annexure - AM) until any legislation is enacted.

11. Issue any other order or orders as this Hon'ble Court may deem fit to grant in the facts and circumstances of the case including the costs of this writ petition, to meet the ends of justice.

INTERIM PRAYER

Pending disposal of the Writ Petition, the Hon'ble Court may be pleased to direct the Respondent No. 5 to conduct camps for awareness and registration of domestic workers, and direct for immediate provision of smart cards on all pending applications for registration filed by the Petitioner Union in the interest of justice and equity.

Place: Bengaluru

Bar & Bench (www.barandbench.com)

Date:

Advocate for the Petitioner

Avani Chokshi

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