

NEED FOR LEGISLATION REGULATING PLACEMENT/ EMPLOYMENT AGENCIES

Prepared by National commission for Women

Background – statement of objects and reasons

The issue of exploitation of women and children domestic workers is frequent and regularly reported. With no rights and rules to fall back on, the domestic helps, mostly migrants from eastern states, have become contemporary slaves. It is also a known fact that many women and children are trafficked and exploited by the placement agencies, which operate openly without any form of restrictions and regulations, also escaping the tax net, thus necessitating the need for regulation and control.

The domestic workers fall outside the Labour legislations thus domestic workers are unable to access their rights. That non recognition of domestic work as legitimate work combined with hidden nature of the worksite results in exploitative living and working conditions and sometimes forced labour and trafficking. Reports of abuse are many with workers facing among other things , extremely long working hours , absence of rest and leave periods, deprivation of food, delayed or non payment of wages and physical and sexual abuse, recruitment related fees, deceptive recruitment practices and discriminative policies further jeopardizes domestic workers right to just and favorable working conditions.

Relying upon separate and weaker protections in a standard contract to protect domestic workers rather than extending equal protection of Labour laws to domestic workers constitute unjustifiable discrimination as prohibited under ICCPR, Convention on Elimination of all forms of Discrimination against Women and migrant workers convention prohibit discrimination on basis of sex, language. Social origin,. Therefore international law guarantees equality before law and equal protection of law to domestic workers.

Under Art 15 (3) of the Indian Constitution, special provisions for women and children may be made and further keeping in view Entry 24 and 23 of list II under schedule VII of the constitution state government can also enact laws to provide for welfare of labour including conditions of work, employers liability, social security and social insurance.

This law should keep in view the rights guaranteed under article 23, 24, 14, 19, 39, 43. Thus it is imperative that a law be enacted to provide for safety and security of domestic maids and regulate the placement/employment agencies which cater to providing employment to any class/category of persons.

The law needs to be broader and go beyond the scope of domestic workers as placement agencies not only cater to domestic but also other employment requirements.

REGULATION OF EMPLOYMENT AGENCIES

ACT 2007

THE ACT SEEKS TO REGULATE THE EMPLOYMENT AGENCIES

Section 1: Application of the Act :

Extends to the whole of India except the State of J&K

Section 2: Definition:

- (a) **“Employment agency”** or a placement agency or any agency by whatever name called carried on (whether for the purpose of gain or reward or not) for or in connection with the employment of persons in any capacity and finding workers employment with employers or of supplying employers with workers for employment by them.

- b) **“Domestic worker”** – any person who is employed for remuneration in any household, through any agency either on a temporary, permanent, part time or full time basis.
- (c) **“Child “** means any child below 18 years of age
- (d) **“ Employer”** a person who hires the service of another person whether part time or full time and includes a natural or juridical person or an association of such persons by whom any person is engaged or employed through any agency for remuneration
- (e) **“License”** means a licence granted under this Act
- (f) **“Licensee”** means the person to whom a licence is granted under this Act
- (g) **“Appropriate Government”** means the central or the State Government

Section 3: Act not in derogation of other laws - Nothing in this Act shall operate to relieve any employment agency of any duty or liability imposed upon it by any other law for the time being in force or to limit any powers given to any public officer under any other law.

Section 4: Employment of a child: no child shall be employed as a domestic worker or for any work which is prohibited under any law for the time being in force

Section 5 Persons carrying on an employment /placement agency to be licensed.

- (1) No person shall carry on an employment agency unless he is the holder of a licence authorizing him to carry on such an agency.
- (2) On an application from an agency for functioning as a placement agency in the prescribed format the appropriate Government shall issue a licence after having been duly satisfied that:

the form of a licence which may be granted or renewed under this Act, the conditions subject to which the licence may be granted or renewed, the fees payable for the grant or renewal of a licence and the security, if any,

required to be furnished for the due performance of the conditions of the licence may be prescribed ;

- a) That the agency is registered either as a sole proprietorship, partnership firm , company or as a non profit organization and
 - b) Maintains proper books of accounts ,Memorandum of association , Rules , Bye Laws as the case may be and the details of the office bearers of the organization and details of persons employed by such agency and
 - c) that there is no criminal cases pending against the said agency, or agency owners or both and
 - d) Premises or place being or to be used for the purpose of placement or employment agency
- (3) Upon issues of license, which is valid for a period 12 months, and is to be renewed periodically, the agency shall furnish to the **Government**, quarterly details of the persons who are registered with the agency for employment, the details of the addresses where these persons are placed and the fees charged against each individual/placement; show proof of adequate verification process for each individual.
- (4) Any person who contravenes or fails to comply with the provision shall be guilty of an offence and shall be liable to a fine not exceeding Rs 15, 000 and in the case of a second or subsequent conviction to a fine not exceeding Rs 30,000 and /or to imprisonment for a term not exceeding 6 months or to both.

Section 6 - Appointment of licensing officers

The appropriate Government, by order notified in the Official Gazette,--

- (a) Appoint such persons, being officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter; and
- (b) Define the limits, within which a licensing officer shall exercise the jurisdiction and powers conferred on licensing officers by or under this Act:

Section 7: Procedure for licensing of agency--

- (a) Every owner of the employment agencies to which this act applied shall, within the period as the appropriate government may by fix, shall make an application to the licensing officer in such form and manner and on payment of such fees as may be prescribed for the license of employment agency.
- (b). Within one month after the receipt of an application for license, the licensing officer shall if the application is complete in all respects, issue license to the employment agency if the application is not so complete then return the application to the principal owner of the agency.
- (c) If the licensing officer is satisfied that the license of any employment agency has been obtained by misrepresentation or suppression of any material fact or that for any other reason, the license requires to be revoked, the licensing officer may after giving an opportunity to the principal owner of the agency to be heard and with approval of the previous government, revoke by order in writing the license and communicate it to the principal owner.
- (d) No principal owner of the employment agency to which the Act applies shall procure or place any worker or employee in any household or any

other work unless he holds a valid license issued to the agency under this act.

section 8 : Revocation of license - if the licensing officer is satisfied either on a reference made to him or otherwise that the license granted has been obtained by misrepresentation or suppression of any material fact or the holder of the license has without reasonable cause failed to comply with the conditions subject to which the license was granted or has contravened any provisions of the act or rules made there under then the licensing officer after giving the reasonable opportunity to be heard , by order in writing revoke the license

Section 9 Effect of revocation.

- (1) Where an order of revocation becomes effective under section 7, the licensee concerned shall forthwith cease to carry on the employment agency.
- (2) Subsection (1) shall not prejudice the enforcement by any person of any right or claim against the licensee concerned or by the licensee concerned of any right or claim against any person arising out of or concerning any matter or thing done prior to the revocation of the license.

Section 10: Appeals

- (1) Any person aggrieved by an order made under section 8, may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellate was prevented by sufficient cause from filing the appeal in time.

- (2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellate an opportunity of being heard, dispose of the appeal as expeditiously as possible.

Section 11: Fees for services rendered.

It shall be lawful for a licensee to charge and receive such fees as may be prescribed from time to time. No licensee shall charge or receive any form of fees, remuneration, profit or compensation otherwise than as provided in the rules

Section 12: Maintenance of registers

The placement agencies shall maintain the records of all the domestic workers and other workers or employees being contracted by them for purposes of employment The record shall consist of the following:

1. Name and address of the employer under whom such domestic worker or employee is working.
2. The period of employment
3. Rate of wages and the mode of payment of the wages.
4. Displacement allowance payable.
5. Passport size photograph of the employer and the worker.
6. Nature of work and the working hours.
7. Copy of contract
8. **The terms to be agreed shall include -**
 - (a) whether the work-seeker is or will be employed by the employment business under a contract of service or apprenticeship, or a contract for services, and in either case, the terms and conditions of employment of the work-seeker which apply, or will apply;
 - (b) an undertaking that the agency will pay the work-seeker in respect of work done by him, whether or not it is paid by the hirer in respect of that

work;

- (c) The length of notice of termination which the work-seeker will be required to give, and which he will be entitled to receive from in respect of particular assignments with hirers;
- (d) The rate of remuneration payable to the work-seeker; or
- (e) The minimum rate of remuneration the employment business reasonably expects to achieve for the work-seeker; details of the intervals at which remuneration will be paid and other amenities ;

Section 13 Entering into a contract on behalf of a client

- (1) An agency shall not enter into, nor purport to enter into, a contract -
 - (a) On behalf of a work-seeker, with a hirer; or
 - (b) on behalf of a hirer, with a work-seeker.Unless the requirements in paragraph (2) are satisfied.
- (2) The requirements referred to in paragraph (2) are that -
 - (a) The person for whom the agency acts has appointed the agency as his agent with authority to enter into the contract on his behalf; and
 - (b) where the agency acts for the work-seeker, it is permitted by the act to charge a fee in relation to the introduction or supply to which the contract relates.
- (3) Where an agency enters into a contract on behalf of a work-seeker with a hirer, or on behalf of a hirer with a work-seeker, the agency shall ensure that the terms of the contract are notified to the party on whose behalf the agency entered into the contract, as soon as is reasonably practicable and in any event no later than the end of the fifth business day following the day on which the agency entered into the contract.

- (4) Where an agency enters into a contract on behalf of a work-seeker with a hirer, or on behalf of a hirer with a work-seeker, the agency shall ensure that the terms of the contract are notified to the party or parties to the contract other than the party on whose behalf the contract was entered into, as soon as is reasonably practicable

and in any event no later than the end of the fifth business day following the day on which the agency entered into the contract.

Section 14: Offences and penalties

Punishment of imprisonment for not less than six months and which may extend up to period of seven years or fine up to 50000 rupees or both shall be given to Any licensee who —

- (a) Charges or receives himself or through another person, for his services, any sum greater than the prescribed fee;
- (b) Knowingly and voluntarily deceives any person by giving false information;
- (c) Instigates or induces any person not to admit in his service any employee who has not applied for employment, work or position through his employment agency; or
- (d) Knowingly sends, directs or takes any girl or woman to any place for immoral purposes or to a place where she is likely to be morally corrupted,
- e) Fail to register them
- f) Make available young children as domestic workers

- h) Fail to maintain records of the workers placed by them
- i) Any other matter as may be prescribed

Section 15 – Appointment and duties of Inspectors

- (1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.
- (2) Subject to any rules made in this behalf, within the local limits for which he is appointed, an inspector may--
 - (a) if he has reason to believe that any Child is employed in any premises or place, enter, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or any Non government organization as he thinks fit
 - (b) Satisfying himself whether the provisions of this Act are being complied with;
 - (c) at any reasonable time, and without previous notice, enter and inspect any employment agency or any premises reasonably suspected of being used for the purposes of an employment agency, and examine all books, or other documents found in the premises, which may appear to him to be the property of or to have been used for the purposes of an employment agency and remove them for further examination. seize or take copies of such register, record of wages, or notices or portions thereof as he may consider

relevant in respect of an offence under this Act which he has reason to believe has been committed by a principal employer or contractor, and

- (d) Exercise such other powers as may be prescribed.
- (3) Where there is reason to believe that any person has been subjected to any form of abuse which prima facie discloses the commission of any cognizable offence, the Inspectors shall take assistance from any Non governmental Organization agency in rescue and rehabilitation of victims
- (4) Any person required to produce any document or thing, or to give any information required, by an inspector under sub-section (2), or by a person appointed under sub-section (3), shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).
- (5) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

Section 16 - Offences by companies

- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was

committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding any thing contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--(a) "company" means any body corporate and includes a firm or other association of individuals; and(b) "director", in relation to a firm, means a partner in the firm.

Section 17 - Cognizance of offences

No court shall take cognizance of any offence under this Act except on a complaint made by an inspector or authorized person or a Non governmental Organization and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Section 18 - Effect of laws and agreements inconsistent with the Act

- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act:
- (2) Nothing contained in this Act shall be construed as precluding any workmen from entering into an agreement with the principal employer or

the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

Section 19 - Protection of action taken under Act

- (1) No suit, prosecution or other legal proceedings shall lie against any licensing officer inspecting officer or any other employee of the Government or any Non governmental organization for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.
- (2) No suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or notification or order made or issued thereunder.

Section 20 - Power to make rules

- (1) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--
 - (a) The form and manner in which an application for functioning as a placement agency in the prescribed format may be made under section 5(2)
 - (b) The form in which an application for the grant or renewal of a licence may be made under and the particulars it may contain;

- (c) the manner in which an investigation is to be made in respect of an application for the grant of a licence and the matters to be taken into account in granting or refusing a licence;
 - (d) the form of a licence which may be granted or renewed under this Act, the conditions subject to which the licence may be granted or renewed, the fees payable for the grant or renewal of a licence and the security, if any, required to be furnished for the due performance of the conditions of the licence;
 - (e) The circumstances under which license may be varied or amended under section 10;
 - (f) The form and the manner in which appeals may be filed under section 11 and the procedure to be followed by appellate officers in disposing of the appeals;
 - (g) The powers that may be exercised by inspectors under section and the local limits within which they shall exercise their powers under this Act.
 - (k) Fees to be charged by the agencies under section 11
 - (n) Any other matter which is required to be, or may be, prescribed under this Act.
- (3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall

be without prejudice to the validity of anything previously done under that rule