

**Title:**           **WHAT IS THE VALUE OF DOMESTIC WORK? ASSESSING THE RIGHTS OF THOSE ON WHOSE BACKS ECONOMIES OF THE ASIA PACIFIC ARE BUILT.**

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**WHAT IS THE VALUE OF DOMESTIC WORK? ASSESSING THE RIGHTS OF  
THOSE ON WHOSE BACKS ECONOMIES OF THE ASIA PACIFIC ARE BUILT.†**

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ABSTRACT

*Nearly 21.5 million people across the Asia Pacific engage in domestic work; of this, an overwhelming 80% are women. Despite these staggering numbers, which indicate just how heavily countries in the Asia Pacific rely on domestic workers, the laws regulating their work and legal protections securing their rights are ineffective if not entirely inadequate. This is disproportionately unfair given the economic value of domestic work for most societies of the Asia Pacific.*

*The 'feminisation of labour' in the context of domestic labour in the Asia Pacific presents a troubling dichotomy: recognizing domestic work as legitimate paid economic work, starkly contrasts with feminist efforts to open opportunities for women outside the privacy of the home, and into public spaces. The upward mobility of women from middle and upper classes, and their ability to contribute to skilled labour forces is acutely possible because of the women who continue to fulfill the feminine burden of domestic work.*

*In such a context, this paper considers a diverse range of countries in the Asia Pacific and their policies and treatment of domestic work. The interplay of law and policy, with the socio-religious contexts of each of these countries invariable stacks the odds against female domestic workers. This paper unpacks the peculiar position of female domestic workers in several countries of the Asia Pacific, highlighting the necessity of better reform, especially now, in light of the COVID-19 pandemic.*

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## I. INTRODUCTION

It was in the 19<sup>th</sup> century, when Friedrich Engels, writing on the origins of family structures, drew a stark distinction between 'productive' and 'reproductive' work.<sup>1</sup> This gendered notion of labour articulated how productive work was a man's job in the public sphere, while reproductive work was the care work performed by women, in housekeeping and childcare. In the 1970s, feminist scholars argued that domestic work should also be considered productive as it involved the caring and rearing of human beings who would later contribute to the labour force.<sup>2</sup> This was the first clarion call recognizing that merely because domestic work is unpaid work accomplished within the privacy of the home, and regulated by patriarchal notions instead of state or market forces, its inherent value could not be diminished.<sup>3</sup>

One might hope that the trajectory of paid domestic labour fares better than that of unpaid domestic work. After all, paid domestic work plays a central, if unseen role in today's global economy. According to the International Labour Organization, 21.5 million people across the Asia Pacific are engaged in domestic work, making up nearly 41% of the domestic labour force across the world.<sup>4</sup> Of these 21.5 million people, 80% are women.<sup>5</sup> South East Asia and the Pacific host 24% of the world's migrant female domestic workers, larger than any other region in the world.<sup>6</sup>

Despite these staggering numbers, the paid care work these women do, and the lives that they lead are predictably isolated: they are hidden from public eye, underpaid, overworked, and separated from their own children to care for children of others. Female domestic workers are often the reason other women, in higher socioeconomic strata, with better fortunes and better

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<sup>1</sup> Friedrich Engels, *The Origin Of The Family, Private Property And The State* (Reissue Edn, Penguin Classics 1884).

<sup>2</sup> Mariarosa Dalla Costa and Selma James, *The Power Of Women And The Subversion Of The Community* (3<sup>rd</sup> Edn, Falling Wall Press 1972).

<sup>3</sup> Carole Pateman, *The Sexual Contract* (Polity Press 1988).

<sup>4</sup> International Labour Office, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* (ILO 2013).

<sup>5</sup> *ibid.*

<sup>6</sup> International Labour Office, *ILO Global Estimates of Migrant Workers and Migrant Domestic Workers: Results and Methodology* (ILO 2015).

resources can enter skilled workforces without having to balance housekeeping and child-rearing as well. In many ways the feminisation of labour that is visible, rests on the backs of workers who carry the ‘feminine’ burden of domestic work.

This paper aims to unpack the troubling landscape of domestic workers rights across the Asia Pacific. The female domestic worker plays a customized role in each individual economy of the Asia Pacific. In labour exporting countries like Philippines and Indonesia, female domestic workers are trained to migrate overseas to work in higher paying labour markets, which bolsters the national economy. In India and Indonesia, female domestic workers already aplenty in their own country, enable the middle and upper-middle class to enter skilled labour forces without having to juggle domestic responsibilities simultaneously. In labour receiving countries like Singapore and Australia, where migrants from labour-rich countries of the Asia Pacific largely shoulder domestic work, citizens have better opportunities at skilled (and by extension, higher-paying) employment. Part II of the essay considers the peculiar position of domestic labour in the Asia Pacific, set against the broader backdrop of feminisation of labour. Part III undertakes a jurisdictional analysis of the laws and policies in various labour-receiving, labour-exporting and labour-rich countries. Part IV considers how the global COVID-19 pandemic has affected domestic workers in these jurisdictions. Part V concludes by highlighting the need for better reform across the Asia Pacific region.

## II. THE ‘FEMINISATION OF LABOUR’ IN THE ASIA PACIFIC

The International Labour Organization (‘ILO’), in its Domestic Workers Convention No. 189 of 2011 has defined domestic work simply as work performed in or for a household/s.<sup>7</sup> The Equal Remuneration Convention, 1950, the Discrimination (Employment and Occupation) Convention, 1958, the Workers with Family Responsibilities Convention, 1981 and the Maternity Protection Convention, 2000 are a few instances of the ILO’s commitment to maintaining gender equality and gender sensitivity in the crafting of international standards and best practices.<sup>8</sup> As ideal as these standards are they are largely out of tandem with practices and policies of the countries examined later in this paper.

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<sup>7</sup> International Labour Organization, *Domestic Workers Convention No. 189*, 2011, Article 1(a).

<sup>8</sup> International Labour Office, *ABC of Women Workers' Rights and Gender Equality*, (ILO 2007).

The apparent ‘feminisation of labour’ implies both the substantial surge in the number of women workers in the mainstream workforce for both skilled and unskilled work, and the flexibilisation of men and women in the labour market.<sup>9</sup> Yet neither interpretation accounts for the several disadvantages, often abuse, that female domestic workers face in their daily work. The feminisation of labour also presents a compelling dichotomy: at one end of the balancing scale is the struggle to recognise domestic work as paid economic work of value while at the other is the feminist effort to reclaim public spaces for women, allowing them to mobilise and work outside the private confines of the home.<sup>10</sup> As women from middle and upper economic classes enter skilled labour forces with (comparatively) better paying prospects, the responsibility of domestic work does not decrease. The onus of fulfilling the care deficit created falls on domestic workers who are largely women from lower socio-economic strata.<sup>11</sup> Consequently, whether domestic work is performed by a ‘woman of the house’ or by hired domestic help, it remains a largely feminine activity to discharge where its social significance is overlooked by market-oriented notions of work in the labour market.<sup>12</sup> In the context of the Asia Pacific, most countries do not include domestic work in the fold of labour work, leaving troubling gaps in policy. It has been observed that these lacunae, and the indifference towards improving them, are a consequence of the failure to recognise the value and skill of domestic labour.<sup>13</sup> In order to resolve the dichotomous knot of the feminisation of domestic labour, efforts across the Asia Pacific must begin with implementing key policy and legislative changes in favour of domestic workers.

The Asia Pacific plays a unique role in the discourse of female domestic workers’ rights. Of migrants from the Asia Pacific, 52.4% are women.<sup>14</sup> Despite having either a primary or intermediate level of education, these women migrant workers are concentrated in low or medium skilled manual labour, such as domestic work.<sup>15</sup> The Asia Pacific also presents a

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<sup>9</sup> Nazneen Kanji and Kalyani Menon-Sen, ‘What does the Feminisation of Labour Mean for Sustainable Livelihoods?’ (2001) International Institute for Environment and Development, 1.

<sup>10</sup> Ulla Wischermann and Ilze Klavina Mueller, ‘Feminist Theories on the Separation of the Private and the Public: Looking Back, Looking Forward’, (2004) 20 Women In German Yearbook: Feminist Studies In German Literature & Culture 184-197.

<sup>11</sup> Katherine Kaufka, ‘The Commodification of Domestic Care: Illegitimacy of Care Work and The Exploitation of Migrant Worker’, (2003) 18 Geo. Immigr. L.J.

<sup>12</sup> Kathleen Lynch, John Baker, Maureen Lyons, *Affective Equality: Love, Care and Injustice*, (Palgrave Macmillan UK 2009).

<sup>13</sup> Gabrielle Meagher, ‘Making Care Visible: Performance Measurement in Welfare Services’, (2002) Uniting Care Burnside Discussion Paper No. 2.

<sup>14</sup> International Labour Office, *Building Human Capital Through Labor Migration in Asia*, (ILO 2014).

<sup>15</sup> UN Women, ‘Migrant Workers in the Asia Pacific’ (United Nations Women)

<<https://asiapacific.unwomen.org/en/focus-areas/women-poverty-economics/migrant-workers>> accessed 7 July 2020.

peculiar socio-cultural context for women migrants. In labour-exporting countries like Indonesia and Philippines, whose economies are bolstered by the remittances earned by female domestic workers abroad, migration is often frowned upon and deemed inappropriate for women. In labour-receiving countries, protections are scarce and regulations stringent. The identities of these women are pre-determined by societal and religious influences leaving them little agency of their own.

Although the cultural differences across the Asia-Pacific are stark, what is central to female domestic workers' rights, is the lacunae in legal protections and the extortionist policies of each country: Australia has an amorphous framework for both the regulation and protection of domestic work despite being a popular destination country for migrant domestic labour; India lacks effective social security for scores of its domestic workers; Indonesia fails to recognise domestic workers in its own country as labour while profiting off the remittances of its migrant domestic workers; the Philippines, a labour-exporting country, has actively pursued female labour migration as an economic policy; while labour-receiving Singapore exercises stringent control over its migrant female domestic workers, denying them several basic human rights on account of their status as transient workers. Although each individual country's policy defers substantially, they are united in their common goal of profiting of the labour these women workers provide irrespective of whether they happen to be exporting or receiving labour.

### III. A WOMAN'S PLACE IN A MAN'S WORLD: ANALYZING ECONOMIES IN THE ASIA PACIFIC.

#### A. FROM DOMESTIC WORK TO DOMESTIC SERVITUDE: EXAMINING LABOUR TRAFFICKING IN AUSTRALIA

An increasing number of migrant domestic workers from Asia seek employment in Australia, which is popular for its high-income appeal.<sup>16</sup> Nearly two-thirds of migrant female domestic workers worldwide settle in high income countries like Australia and Singapore.<sup>17</sup> Records indicate that by 2014, migrant labour had risen to 116,000 persons in Australia.<sup>18</sup> Yet Australia has poor regulatory frameworks to protect migrant female domestic workers rights. In the stark absence of institutionalized protections, human trafficking of female migrants becomes a

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<sup>16</sup> International Labour Office, *ILO Global Estimates of Migrant Workers and Migrant Domestic Workers: Results and Methodology* (ILO 2015) 78.

<sup>17</sup> International Labour Office, *ILO Global Estimates of Migrant Workers and Migrant Domestic Workers: Results and Methodology* (ILO 2015) 80.

<sup>18</sup> International Labour Office, *Building Human Capital Through Labor Migration in Asia*, (ILO 2014), 7.

startlingly peculiar problem in Australia. This section considers adequate policies and protections for migrant female domestic workers, and not for Australian citizens who may perform domestic work for remuneration.

## 1. THE THIN LINE BETWEEN DOMESTIC WORK AND HUMAN TRAFFICKING

A significant concern that arises in Australia is trafficking for the purpose of domestic servitude where migrant female domestic workers are brought to the country under the pretext of sham marriages and are then forced to work as domestic help, often facing physical and sexual abuse. One of the most notorious instances of trafficking for the purpose of domestic servitude was examined in *R. v. Kovacs*.<sup>19</sup> The accused Zoltan and Melita Kovacs, brought a young Filipina woman to Australia by arranging a sham marriage to a friend of theirs, to have her work as domestic labour in their home and shop.<sup>20</sup> The young girl was made to work long hours, without any real pay and was sexually abused and raped by Zoltan Kovacs over the course of her employment.<sup>21</sup> Eventually, she was able to escape. While the *Kovacs* case spurred national discourse on trafficking for domestic servitude, the principal trafficking element was recognized to be the sham marriage used to facilitate the young girl's entry into Australia.<sup>22</sup> Notwithstanding that the young Filipina was trafficked into Australia, this case highlights the lack of specific protections in the country addressing female domestic worker's rights. The peculiar dilemma of trafficking for domestic servitude postulates a troubling interrelation between illegal human trafficking and unprotected domestic labour.

Several other cases highlight the injustices that migrant female domestic workers face. In *Masri v. Santoso* a young Indonesian female domestic worker was brought to Australia to work as domestic help.<sup>23</sup> Her passport was confiscated by her employers on her arrival, she received little pay and worked 17 hours a day.<sup>24</sup> In *Buenaobra v. Anwar Alesi*, diplomatic immunity had to be considered in the context of domestic workers rights when a Filipina domestic worker, an employee of the Iraqi Consul-General in Sydney, was underpaid and unfairly dismissed.<sup>25</sup>

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<sup>19</sup> *R v Kovacs* [2007] QCA 143. [L  
SEP]

<sup>20</sup> Andreas Schloenhardt & Jarrod Jolly, 'Honeymoon from Hell: Human Trafficking and Domestic Servitude in Australia', (2010) 32 Sydney L. Rev. 671, 672-74.

<sup>21</sup> *ibid.*

<sup>22</sup> *ibid* 679.

<sup>23</sup> *Masri v. Santoso* [2004] NSW 108 (IR Comm).

<sup>24</sup> Leonie Lamont, 'Silent Shame of our New Slaves', *The Sydney Morning Herald* (Sydney, 10 June 2004) <<https://www.smh.com.au/national/silent-shame-of-our-new-slaves-20040610-gdj3d1.html>> accessed 7 July 2020.

<sup>25</sup> *Juliet Buenaobra v Anwar Alesi* [2018] FWC 4311.



The case gained traction when the Fair Work Commission challenged conventional notions of diplomatic immunity to hold a foreign diplomat responsible for labour exploitation and trafficking for domestic servitude. Diplomatic immunity has always posed a unique problem in Australia. In another case, an unpaid Filipina domestic worker, at the former Consul-General of Chile, was awarded her claim by the Magistrates Court of Victoria. However, she was unable to actually enforce the judgment against the Chilean embassy, and had to eventually leave Australia without being paid her dues despite a judgment in her favour.<sup>26</sup> Without proper legislation addressing these issues, domestic workers in Australia find it difficult to enforce their rights.

## 2. BUILDING BETTER LEGISLATIONS IN AUSTRALIA

Given that domestic work is part of Australia's informal economy, migrant domestic workers face several challenges: not all enter the country through formal programs; the lack of laws and procedures complicate access to justice and awareness, while the privacy of their workplaces isolate domestic workers and increase their dependence on their employers.<sup>27</sup>

Most states in Australia consider domestic workers to be covered under the definition of employees under the Fair Work Act, 2009. The notable exception to this is Western Australia where domestic workers are largely excluded from important labour laws.<sup>28</sup> In fact, under their Industrial Relations Act, 1979, the definition of an employee specifically excludes any person engaged in domestic service in a private home.<sup>29</sup> This largely leaves domestic workers to the mercy of common law, and the validity of their employment contracts—often an impractical approach, as workers do not necessarily formalize their employment conditions in a contract (considering especially, the power imbalances that exist with their employers). The Fair Work Commission and Australian courts have clarified that undocumented migrant workers,<sup>30</sup> or workers disentitled to work in Australia under the Migrant Act, 1958,<sup>31</sup> cannot have a valid and enforceable contract. Further such workers are disentitled to the minimum employment standards of the Fair Work Act. If migrant workers are in breach of their visa requirements,

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<sup>26</sup> Heather Moore, *Service or Servitude: A Study of Trafficking for Domestic Work in Australia*, (The Mercy Foundation 2019) 23.

<sup>27</sup> Heather Moore and Samantha McCormack, *Improving Protections for Migrant Domestic Workers in Australia*, (The Freedom Partnership, The Salvation Army and Walk Free Foundation 2015) 9-10.

<sup>28</sup> *ibid* 7.

<sup>29</sup> Industrial Relations Act, 1979, Section 7 (AU).

<sup>30</sup> *Smallwood v Ergo Asia Pty Ltd* [2014] FWC 964.

<sup>31</sup> *Australian Meat Holdings v Kazi* [2004] QCA 147.

they are also unlikely to approach authorities for fear that they might be detained or even deported back to their home countries.<sup>32</sup>

The Fair Work Ombudsman, under the Fair Work Act, 2007, may investigate workplaces where vulnerable workers (especially immigrants and non-English speaking workers) may be at risk.<sup>33</sup> However data indicates that only 92 inspectors ensure compliance with the Fair Work Act, 2007, and 70 facilitate dispute resolution, for 11.6 million workers in 2.1 million workplaces.<sup>34</sup> Even where healthcare and safety is a prime concern in exploitative workplaces, officials can enter residential homes only with a warrant and the consent of the resident.<sup>35</sup>

### 3. RECOMMENDATIONS FOR BETTER RIGHTS FOR DOMESTIC WORKERS IN AUSTRALIA

Several studies and reports on the limited scope of labour legislations and insufficient data highlight the need to plug the gaps in Australian regulatory frameworks to facilitate better protection for domestic workers. Some of these are symbolic commitments like requiring the Australian government to ratify international protocols,<sup>36</sup> like the Decent Work for Domestic Workers Convention 2011,<sup>37</sup> and the Supplemental Protocol to the Forced Labour Convention, 2014.<sup>38</sup> Other practical measures cater to reducing the vulnerability of migrant workers in Australia by establishing better visa and immigration procedures for such workers to orient them upon arrival, and lawfully extend their stay in to pursue actions for unpaid wages and other entitlements.<sup>39</sup> Emphasis has been placed on developing better mechanisms to aid access to justice including a public complaints redressal mechanism, better data collection, and training for police forces and agencies who may be in contact with such workers.<sup>40</sup> These recommendations could serve in alleviating some of the difficulties faced by domestic workers in Australia. Although this is not a one-stop solution to the systemic troubles that migrant

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<sup>32</sup> Dr. Stephen Clibborn, 'Productivity Commission Inquiry into the Workplace Relations Framework' (2015) <[https://www.pc.gov.au/\\_data/assets/pdf\\_file/0010/193465/subdr0353-workplace-relations.pdf](https://www.pc.gov.au/_data/assets/pdf_file/0010/193465/subdr0353-workplace-relations.pdf)> accessed 7 July 2020.

<sup>33</sup> Heather Moore and Samantha McCormack, *Improving Protections for Migrant Domestic Workers in Australia*, (The Freedom Partnership, The Salvation Army and Walk Free Foundation 2015), 8.

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

<sup>36</sup> Department of Mines, Industry Regulation and Safety, 'Ministerial Review of the State Industrial Relations System: Interim Report' (Government of Western Australia, 2018), 51 <<https://www.commerce.wa.gov.au/labour-relations/interim-report-ministerial-review-state-industrial-relations-system>> accessed 7 July 2020.

<sup>37</sup> International Labour Organization, *Domestic Workers Convention No. 189*, 2011.

<sup>38</sup> International Labour Organization, *Protocol of 2014 to the Forced Labour Convention 1930*, 2014.

<sup>39</sup> Heather Moore, *Service or Servitude: A Study of Trafficking for Domestic Work in Australia*, (The Mercy Foundation 2019), 9.

<sup>40</sup> *ibid.*

female domestic workers in Australia face, implementing these measures would affirm the country's commitment to protecting domestic workers against trafficking and forced labour.

## **B. DOMESTIC WORK IN INDIA: A STUDY IN SOCIAL (IN)SECURITY**

Domestic workers are almost a necessity in urban India, employed either as part-time or live-in workers.<sup>41</sup> Nearly 4.75 million workers were engaged in domestic labour in 2004.<sup>42</sup> These numbers remain significant in 2018 too.<sup>43</sup> The agrarian crisis, diminishing rural employment opportunities and increased urban migration have contributed to the burgeoning rise in paid domestic work.<sup>44</sup> Yet despite their impressive numbers, domestic workers in India have been unable to collectively bargain for stronger rights and better social security.

### **1. CHALLENGES OF DOMESTIC WORK: A TROUBLING MARE'S NEST**

The primary challenge that domestic workers face in India is being visibly seen as workers, without which, their work continues to be largely unregulated.<sup>45</sup> Since domestic work is not seen as 'real work' or 'legitimate employment', it is largely excluded from the scope of regulatory protection.<sup>46</sup> The possibility of any regulation is complicated by the fact that domestic work occurs in the confines of the home.<sup>47</sup> The intervention of the state into private affairs of the family, even if in the course of protecting the rights of domestic workers, can be seen as illegitimate.<sup>48</sup> This sheathes employers from any real governmental action, often providing a veneer for exploitation of the workers.<sup>49</sup> The household or home is not an industrial

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<sup>41</sup> Ministry of Labour and Employment, 'Final Report of the Task Force on Domestic Workers: Realizing Decent Work' (Director General of Labour Welfare, Government of India 2011).

<sup>42</sup> Self-Employed Women's Association, 'Domestic Workers' Laws and Legal Issues in India' (WEIGO Law and Informality Resources and Cambridge USA 2014), <<https://www.wiego.org/resources/domestic-workers-laws-and-legal-issues-india>> accessed 7 July 2020.

<sup>43</sup> Deya Bhattacharya, 'Centre's Draft Policy Lacks Teeth; Fails to Chart Employer-Employee Relationship', *Firstpost*, (India, 24 May 2018) <<https://www.firstpost.com/india/centres-draft-policy-for-domestic-workers-lacks-teeth-fails-to-chart-employee-employer-relationship-4480851.html>> accessed 7 July 2020.

<sup>44</sup> Rajni Palriwala & N. Neetha, 'Care Arrangements and Bargains: Anganwadi and Paid Domestic Workers in India', (2010) 149 *Int'l Lab. Rev.* 511, 518.

<sup>45</sup> C. P. Chandrasekhar, 'India's Informal Economy', *The Hindu*, (India, 3 September 2014) <<http://www.thehindu.com/opinion/columns/Chandrasekhar/indias-informal-economy/article11119085.ece>> accessed 7 July 2020.

<sup>46</sup> Katherine Kaufka, 'The Commodification of Domestic Care: Illegitimacy of Care Work and The Exploitation of Migrant Worker', (2003) 18 *Geo. Immigr. L.J.*

<sup>47</sup> Mihika Poddar & Alex Koshy, 'Legislating for Domestic Care Workers in India - An Alternative Understanding', (2019) 12 *NUJS L. Rev.* 1

<sup>48</sup> *ibid.*

<sup>49</sup> Self-Employed Women's Association, 'Domestic Workers' Laws and Legal Issues in India' (WEIGO Law and Informality Resources and Cambridge USA 2014), <<https://www.wiego.org/resources/domestic-workers-laws-and-legal-issues-india>> accessed 7 July 2020.

workplace to which labour laws can apply.<sup>50</sup> Consequently, a domestic worker cannot have recourse to labour laws or labour courts in case of a dispute.<sup>51</sup> Essentially this is grounded in the capitalist separation of home and workplace.<sup>52</sup>

Domestic workers also find it arduous to oppose unfair and discriminatory employment conditions, when the definitions of ‘workman’, ‘employer’ or ‘establishment’ under labour laws are inapplicable to the domestic workspace.<sup>53</sup> It has been uniquely, albeit unfairly recognized that those engaged in personal service cannot be considered ‘workmen’ for the purpose of the Trade Unions Act, 1926.<sup>54</sup> This severely undercuts the ability of domestic workers to unionize and bargain collectively.<sup>55</sup>

Domestic workers battle exploitative and discriminatory practices, such as long working hours with little or no breaks, no fixed minimum wage rates, a largely undefined nature of employment and a precariousness of employment status.<sup>56</sup> They are often the unfortunate victims of physical and sexual abuse.<sup>57</sup> In 2012, it was found that 23% of women most vulnerable to workplace harassment belong to the domestic worker category. In most cases, there was no action against such harassment.<sup>58</sup> Caste and religious differences set up hierarchical and wage disparities in domestic employment.<sup>59</sup> Domestic workers are often not permitted to use toilet facilities or drinking water in their workplaces, and are made to use different utensils.<sup>60</sup>

The peculiarities of the urban Indian experience also influence the hurdles domestic workers face. For instance, labour is viewed as a necessity to housework—domestic technology that

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<sup>50</sup> Bangalore Water Supply and Sewerage Board v. Rajappa, (1978) 2 SCC 213 (India).

<sup>51</sup> Neetha N. & Rajni Palriwala, ‘The Absence of State Law: Domestic Workers in India’, 2011) 23 Can. J. Women & L. 97.

<sup>52</sup> *ibid.*

<sup>53</sup> Self-Employed Women's Association, ‘Domestic Workers' Laws and Legal Issues in India’ (WEIGO Law and Informality Resources and Cambridge USA 2014), <<https://www.wiego.org/resources/domestic-workers-laws-and-legal-issues-india>> accessed 7 July 2020.

<sup>54</sup> Rangaswami v. Registrar of Trade Unions, AIR 1962 Mad 231 (India).

<sup>55</sup> The Trade Unions Act, 1926 (India).

<sup>56</sup> International Labour Office, *Indispensable Yet Unprotected: Working Conditions of Indian Domestic Workers at Home and Abroad*, 28, (ILO 2015).

<sup>57</sup> International Labour Office, ‘India: Decent Work for Domestic Workers’, (ILO 2010) <[https://www.ilo.org/asia/publications/WCM\\_041954/lang--en/index.htm](https://www.ilo.org/asia/publications/WCM_041954/lang--en/index.htm)> accessed 7 July 2020.

<sup>58</sup> Lucy Dubochet, ‘Thorny Transition-Women's Empowerment and Exposure to Violence in India’, (Oxfam India 2014) <<https://www.oxfamindia.org/sites/default/files/WP10Thorny%20transition%20final.pdf>> accessed 7 July 2020.

<sup>59</sup> United Nations, ‘Rights for Domestic Workers’, *United Nations*, (India, 20 February 2014) <<http://in.one.un.org/page/rights-for-domestic-workers/>> accessed 7 July 2020.

<sup>60</sup> Lakshmi Srinivas, ‘Master-Servant Relationship in Cross-Cultural Perspective’, (1995) 30 Economic And Political Weekly.

eases household chores is additional or supplemental to the actual labour of a domestic worker. As the demands for childcare increase, so has the need for domestic workers, even if only to free up their female employers from housework. Another peculiarity is the continuing demand for labour-intensive, traditional home-cooked food and other domestic and familial practices that require the aid of domestic workers. Interestingly, domestic workers replace or supplement the labour of the women in the family without disturbing gendered divisions of labour or the patriarchal construction of work. These observations indicate how domestic work continues to be characterized as low-valued, low-waged feminine work.<sup>61</sup>

## 2. LEGISLATING FOR BETTER RIGHTS FOR DOMESTIC WORKERS

The employment of domestic workers is not subject to any over-arching legislations at the national level.<sup>62</sup> As a result, the hours and conditions of work, leave, entitlements, and salary bonuses are not consistent in domestic work across the country.<sup>63</sup> Domestic workers operate in extreme hierarchy and informality wherein the terms of employment are usually biased against them and with lacking security of employment, health insurance or pension.<sup>64</sup>

In a bid to protect the rights of domestic workers, it is necessary to extend the protection of several existing legislations. For instance, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has sought to protect domestic workers from sexual harassment in households through the establishment of a district-level grievance Local Complaints Committee with the power to award monetary compensation.<sup>65</sup> Yet this process is riddled with complications: in many districts, Local Complaints Committees remain unconstituted, are unable to address more serious offences against domestic workers, and often fall prey to corruption and bribery.<sup>66</sup>

Similarly, in a test-run of possible policy, the application of Employees State Insurance, under the Employees State Insurance Act, 1948, was extended to domestic workers in the cities of

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<sup>61</sup> Rajni Palriwala & N. Neetha, 'Care Arrangements and Bargains: Anganwadi and Paid Domestic Workers in India', (2010) 149 Int'l Lab. Rev. 511, 518.

<sup>62</sup> *ibid* 519.

<sup>63</sup> *ibid*.

<sup>64</sup> *ibid*.

<sup>65</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Section 13(3)(ii) (India).

<sup>66</sup> Utkarsh Agrawal & Shailija Agarwal, 'Social Security for Domestic Workers in India', (2018) 14 Socio-Legal Rev. 30.

Delhi and Hyderabad.<sup>67</sup> Once again several problems persist: need-based benefits like sickness, maternity, disablement and dependents' benefits are left out, domestic workers are considered self-employed workers, and their registration is entirely voluntary.<sup>68</sup> In this respect, directions have been issued to ensure proper registration of domestic workers.<sup>69</sup>

The Government of India has attempted to consolidate various state and centre run schemes for domestic workers.<sup>70</sup> The Rashtriya Swasthya Bima Yojna, an alternative scheme to universal healthcare brought domestic workers into its fold in 2011.<sup>71</sup> Certain states in India, like Maharashtra<sup>72</sup> and Tamil Nadu<sup>73</sup> have enacted welfare boards to ensure social security and safety of domestic workers. However legislative indifference and inefficiency, poor awareness of functioning and low registration continues to plague these Boards.<sup>74</sup>

Several draft bills have been moved in the Parliament of India, in an attempt to consolidate regulations for social security of domestic workers. In the recent past, these include the Domestic Workers Welfare Bill, 2016,<sup>75</sup> which includes both migrant and minor domestic labour, mandates collection of a cess from employers for maintenance of a social security fund and requires employers/placement agencies to register employees;<sup>76</sup> the Domestic Workers (Regulation of Work and Social Security) Bill, 2017 introduced separately in the Lower House

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<sup>67</sup>PTI Hyderabad, 'Domestic Workers to be brought under ESI Fold soon: Dattatreya', *The Hindu Business Line*, (Hyderabad, 14 August 2016) <<https://www.thehindubusinessline.com/news/domestic-workers-to-be-brought-under-esi-fold-soon-dattatreya/article8988684.ece>> accessed 7 July 2020.

<sup>68</sup> Neetha N., 'Employees' State Insurance Scheme for Domestic Workers: Yet Another Mockery', (2017) 52(11) *Economic and Political Weekly* 16, 17.

<sup>69</sup> *Shramjeevi Mahila Samiti v. State of NCT of Delhi*, SLP (Cr.) No. 150 of 2012, order dated 4-8- 2017 (SC) (India).

<sup>70</sup> Ministry of Labour and Employment, 'Guidelines for the Pilot for Convergence in Implementation of Major Social Security Schemes for Unorganised Workers in India on a Single Platform', (Director General of Labour Relations, Government of India 20 June 2014).


<sup>71</sup> PTI, 'Domestic Helps to get Medical Insurance Benefits', *Live Mint*, (New Delhi, 23 June 2011) <<https://www.livemint.com/Politics/PiSOfwWVjAjtANWbrqJDpK/Domestic-helps-to-get-medical-insurance-benefits.html>> accessed 7 July 2020.

<sup>72</sup> The Maharashtra Domestic Workers Welfare Board Act, 2008, Section 3(3), (India).

<sup>73</sup> Thiru T.M. Anbarasan, 'Policy Note on Labour, Factories, Employment and Training, Labour and Employment Department', (Labour and Employment Department, Government of Tamil Nadu, 2010).

<sup>74</sup> Surendra P. Gangan, 'Now, Maharashtra Domestic Workers to Get Benefits of Minimum Wages Act', *The Hindustan Times* (Mumbai, 29 August 2013) <<https://www.hindustantimes.com/mumbai/now-maharashtra-domestic-workers-to-get-benefits-of-minimum-wages-act/story-W69wX4CrZVqMpuZBTedN7H.html>> accessed 7 July 2020.

<sup>75</sup> The Domestic Workers' Welfare Bill, 2016, (Introduced in the Lok Sabha by Dr Shashi Tharoor on 5 August 2016).

<sup>76</sup> G. Sampath, 'It's Not Help, It's Work', *The Hindu*, (India, 14 July 2017) <<https://www.thehindu.com/opinion/op-ed/its-not-help-its-work/article19273135.ece>> accessed 7 July 2020. 

of Parliament<sup>77</sup> and the Upper House of Parliament.<sup>78</sup> These bills have not been enacted into law by Parliament.

### 3. THE WAGE QUESTION

Unpacking the wage structure for domestic work in India is a complex, if not impossible exercise, given both the absence of any labour legislation regarding wages and the ambiguity of any discernable structure in the domestic work industry.

Although disputed, data seems to indicate that domestic work pays better wages than other informal-sector occupations, especially for women.<sup>79</sup> Even so, the wages of domestic workers are below the National Floor Level Minimum Wage of INR 80 per day.<sup>80</sup> Variations by sex and category of domestic work also reflect the general female-male differential in wages, even for the same task.<sup>81</sup>

The fragmentation of the domestic labour market by area of residence and class of the employer within one town or city leads to discernible differences in the application of wage rates for domestic work.<sup>82</sup> Even stereotypes regarding skill and efficiency of domestic workers affect their wages and treatment, making a uniform wage rate a near impossibility. This in turn undercuts any effort at unionization or legislation and is used to justify the lack of regulation.<sup>83</sup>

Attempts to include domestic workers in the fold of the Minimum Wages Act, 1948 have had underwhelming results, with only 11 of 29 states adding domestic work to the ambit of the Act.<sup>84</sup> Even among these 11 states, there is a noticeable reluctance in implementation, as states tread cautiously when it comes to inspecting and prosecuting households which don't toe the minimum wage line.<sup>85</sup> Even where minimum wage limits are implemented, little correlation

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<sup>77</sup> The Domestic Workers (Regulation of Work and Social Security) Bill, 2017 (Introduced in the Lok Sabha by Shri Sankar Prasad Datta on 21 July 2017).

<sup>78</sup> The Domestic Workers (Regulation of Work and Social Security) Bill, 2017 (Introduced in the Rajya Sabha by Mr. Oscar Fernandes on 7 April 2017).<sup>[1]</sup><sup>[2]</sup>

<sup>79</sup> Rajni Palriwala & N. Neetha, 'Care Arrangements and Bargains: Anganwadi and Paid Domestic Workers in India', (2010) 149 Int'l Lab. Rev. 511, 519.

<sup>80</sup> *ibid.*

<sup>81</sup> *ibid.*

<sup>82</sup> Neetha N. & Rajni Palriwala, 'The Absence of State Law: Domestic Workers in India', (2011) 23 Can. J. Women & L. 97, 112.

<sup>83</sup> *ibid.*

<sup>84</sup> Labour Bureau Chandigarh, 'Report on the Working of the Minimum Wages Act, 1948 for the Year 2013', (Ministry of Labour and Employment, Government of India, 2013). The following states have extended applicability of Minimum Wages Act, 1948 to domestic workers- Punjab, Karnataka, Haryana, Dadra and Nagar Haveli, Andhra Pradesh, Bihar, Rajasthan, Kerala, Meghalaya, Tripura, Odisha and Jharkhand.<sup>[1]</sup><sup>[2]</sup>

<sup>85</sup> Neetha N., *Minimum Wage Setting Practices in Domestic Work: an Inter-State Analysis*, (ILO 2015) 37-39.

has been observed between minimum wages and market wages.<sup>86</sup> Data indicates that in some cases, domestic workers are paid much less than minimum wages,<sup>87</sup> while elsewhere, market wages are significantly higher than the minimum wages.<sup>88</sup>

#### 4. THE STRUGGLE FOR UNIONISATION AND THE ROLE OF PLACEMENT AGENCIES

The shaky footing that domestic workers find themselves precariously perched on, effectively precludes any real attempt at collective bargaining. As observed earlier, those engaged in personal service cannot be considered ‘workmen’ for the purpose of the Trade Unions Act, 1926.<sup>89</sup> Nevertheless NGOs over the years have attempted to coalesce for domestic workers rights. These include organizations like the National Domestic Workers Movement and the All India Democratic Women's Association which have rallied for the non-payment of wages, recognition of workers, sexual harassment, and legal aid among others.<sup>90</sup>

In recent years, placement agencies, which source domestic workers from hinterlands in the country and put them to employment in cities and towns have emerged. Their organizational patterns range from church-initiated agencies to purely commercial establishments. They may be registered under, or backed by, a trade union (Self Employed Women's Association), a cooperative society (Nirmala Niketan), a voluntary organization (Tribal Development Society), or a church organization (Yuvati Seva Sadan).<sup>91</sup> Suggestions have been made for the Contract Labour (Regulation and Abolition) Act, 1970 to regulate placement agencies and the conditions of work in domestic service.<sup>92</sup>

#### C. INDONESIA: AN INTERSECTION OF LOCAL AND MIGRANT FEMALE DOMESTIC LABOUR

Indonesia is an interesting jurisdiction to study: Despite domestic workers employed both locally in Indonesia and as migrants in countries abroad, neither subset fares particularly well where legal protections are concerned. With 4.2 million domestic workers working in

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<sup>86</sup> *ibid.*

<sup>87</sup> Nimushakavi Vasanthi, ‘Addressing Paid Domestic Work: A Public Policy Concern’, (2011) *Economic and Political Weekly* 46(43) at 85, 91.

<sup>88</sup> Neetha N., *Minimum Wage Setting Practices in Domestic Work: an Inter-State Analysis*, (ILO 2015) 50.

<sup>89</sup> *Rangaswami v. Registrar of Trade Unions*, AIR 1962 Mad 231 (India).

<sup>90</sup> Neetha N. & Rajni Palriwala, ‘The Absence of State Law: Domestic Workers in India’, (2011) 23 *Can. J. Women & L.* 97, 112.

<sup>91</sup> *ibid* 110.

<sup>92</sup> The Contract Labour (Regulation and Abolition) Act, 1970 (India).



Indonesia,<sup>93</sup> and close to 3.6 million domestic workers employed as migrants abroad,<sup>94</sup> it is crucial for Indonesia to enact adequate protections for its considerable domestic labour force.

## 1. PROTECTING FEMALE DOMESTIC WORKERS IN INDONESIA

Despite the 4.2 million domestic workers approximated to be working in Indonesia,<sup>95</sup> legal protections for domestic work in the country are sparse and fragmented. The Constitution of Indonesia outlines some inherent protections for all citizens, including domestic workers: Article 27 (paragraph 2) lays down that all citizens have the right to work and decent living for humanity,<sup>96</sup> while Article 28D (paragraph 2) allows every person with the right to work to receive an honorarium and fair and decent treatment in working relationships.<sup>97</sup> These provisions imply the inherent dignity of domestic work—an attitude that is largely absent in Indonesia. Article 28E (paragraph 3) of the Constitution of Indonesia confers the right to freedom of association, assembly and expression.<sup>98</sup> Although this is significant in securing collective bargaining power for domestic workers, and for consolidating their demands for better legal and policy reform, in reality, many organizations found they could not persuade domestic workers to be recruited in the face of stark opposition from both employers and the community.<sup>99</sup> Although Article 28H (paragraph 3)<sup>100</sup> and Article 34 (paragraph 2)<sup>101</sup> of the Constitution of Indonesia give unto citizens the fundamental right to social security, domestic workers in Indonesia, cannot avail of tangible social security, as they are not recognized as workers or labourer under the Law of the Republic of Indonesia Number 13 of 2003 on Manpower (hereinafter ‘Law on Manpower’).<sup>102</sup>

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<sup>93</sup> Jack Britton, ‘Indonesia’s Domestic Workers Need Urgent Protection.’ *The Jakarta Globe* (Indonesia, 21 November 2018) <<https://jakartaglobe.id/opinion/indonesias-domestic-workers-need-urgent-protection/>> accessed 7 July 2020.

<sup>94</sup> World Bank, ‘Indonesia’s Global Workers: Juggling Opportunities and Risks’, (2017) 31, <<http://documents.worldbank.org/curated/en/946351511861382947/pdf/121691-Indonesias-Global-Workers-Juggling-Opportunities-Risks.pdf>> accessed 7 July 2020.

<sup>95</sup> Jack Britton, ‘Indonesia’s Domestic Workers Need Urgent Protection.’ *The Jakarta Globe* (Indonesia, 21 November 2018) <<https://jakartaglobe.id/opinion/indonesias-domestic-workers-need-urgent-protection/>> accessed 7 July 2020.

<sup>96</sup> The 1945 Constitution of the Republic of Indonesia, Article 27.

<sup>97</sup> The 1945 Constitution of the Republic of Indonesia, Article 28D.

<sup>98</sup> The 1945 Constitution of the Republic of Indonesia, Article 28E.

<sup>99</sup> Triana Sofiani and Sudarsono and Rachmad Syafa and M Ali Syafa, ‘Legal Status of Domestic Workers in Indonesia in Labor Law and the Implication on Employment Relationship’ (2014) 30 *JL Pol’y & Globalization* 33, 45.

<sup>100</sup> The 1945 Constitution of the Republic of Indonesia, Article 28H.

<sup>101</sup> The 1945 Constitution of the Republic of Indonesia, Article 34.

<sup>102</sup> Act of the Republic of Indonesia Number 13 of 2003 Concerning Manpower (hereinafter ‘Law on Manpower’).

Scholars argue that the reluctance to include domestic workers in the Law on Manpower arises from strong patriarchal values of the society and the state.<sup>103</sup> The situation is certainly anomalous: Articles 1(2)<sup>104</sup> and 1(3)<sup>105</sup> of the Law on Manpower can be read to include domestic workers as they are people capable of doing work, who perform work in the household at the instruction of their employers, and for which, they receive wages or other forms of like remuneration.<sup>106</sup> The trouble arises with Article 1(5)<sup>107</sup> which equates an employer under the Law on Manpower with ‘businessmen’, effectively excluding households which employ domestic help.<sup>108</sup> This distinction also disallows the working relationship of domestic workers with their employers from being categorized as an employment relationship under Article 50 of the Law on Manpower, which describes an employment relationship due to an employment agreement between a businessman, and a worker or labourer.<sup>109</sup> The consequence of this definitional exclusion is that domestic workers cannot seek the benefit of standard working hours,<sup>110</sup> or adequate rest days<sup>111</sup> under the Law on Manpower.

Fragmented efforts at legislating protections for domestic workers in Indonesia have resulted in provincial actions of some note. For instance Jakarta has the Provincial Regulation of Jakarta Number 6 of 2004 on Employment, which followed the Law on Manpower. This regulates the implementation of domestic worker welfare,<sup>112</sup> and requires the Governor of Jakarta to follow up on the licenses of domestic worker agencies.<sup>113</sup> The Provincial Regulation of Jakarta Number 191 of 2010 regulates the operational approval of providers and suppliers of domestic worker agencies.<sup>114</sup> The Governor's Regulation Number 31 of 2010 concerning the Protection of Domestic Workers and the Mayoral Regulation Number 48 of 2011 addresses some of the

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<sup>103</sup> Triana Sofiani and Sudarsono and Rachmad Syafa'at and M Ali Syafa'at, 'Policy of Legal Protection Formulation for Domestic Workers in Indonesia Based on Constitutional Rights' (2014) 28 *JL Pol'y & Globalization* 30, 31.

<sup>104</sup> Law on Manpower, Article 1(2).

<sup>105</sup> Law on Manpower, Article 1(3).

<sup>106</sup> Triana Sofiani and Sudarsono and Rachmad Syafa and M Ali Syafa, 'Legal Status of Domestic Workers in Indonesia in Labor Law and the Implication on Employment Relationship' (2014) 30 *JL Pol'y & Globalization* 33, 36.

<sup>107</sup> Law on Manpower, Article 1(5).

<sup>108</sup> Triana Sofiani and Sudarsono and Rachmad Syafa and M Ali Syafa, 'Legal Status of Domestic Workers in Indonesia in Labor Law and the Implication on Employment Relationship' (2014) 30 *JL Pol'y & Globalization* 33, 34-35.

<sup>109</sup> Law on Manpower, Article 50.

<sup>110</sup> Law on Manpower, Article 77.

<sup>111</sup> Law on Manpower, Article 79.

<sup>112</sup> Provincial Regulation of Jakarta Number 6 of 2004 on Employment, Article 50 (Indonesia).

<sup>113</sup> Provincial Regulation of Jakarta Number 6 of 2004 on Employment, Article 51 (Indonesia).

<sup>114</sup> Provincial Regulation of Jakarta Number 191 of 2010 (Indonesia).

issues domestic workers face in the Special Region of Yogyakarta.<sup>115</sup> Another incomplete effort at legislating protections is the Draft Bill on the Protection of Domestic Workers which was created in 2004 and is yet to be implemented.<sup>116</sup> Even the oft-applauded Ministry of Manpower Regulation Number 2 of 2015, aimed at improving the lot of domestic workers in Indonesia, is a mere moral imperative and has no real binding strength as it is a regulation and not a piece of legislation.<sup>117</sup> Thus, despite their immense numbers within their own country, Indonesian female domestic workers do not have the protection of a cohesive national legal mechanism and are left largely to the whims and fancies of their employers.

## 2. A TALE OF TWO INCOMPATIBLE INTERESTS: THE POLITICS OF REMITTANCES AND MIGRATION BANS IN INDONESIA

In 2016, nearly 9 million Indonesian migrants, both documented and undocumented, worked abroad.<sup>118</sup> Of those, 40% worked as domestic labour; an overwhelming 94% of whom were migrant female domestic workers.<sup>119</sup> In 2018, migrant female domestic workers remitted nearly USD 8.8 million, equaling close to 1% of Indonesia's total Gross Domestic Product.<sup>120</sup> Unlike their local counterparts, migrant female domestic workers have some degree of legal protection as their remittances are recognized as tangible contributions to the economy.

Since migrant female domestic workers are invaluable for the remittances they send home, the Law of Republic of Indonesia Number 39 of 2004 on the Placement and Protection of Indonesian Workers Abroad, was enacted shortly after the Law on Manpower in 2003.<sup>121</sup> This was recently repealed by the Law of Republic of Indonesia Number 18 of 2017 on the

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<sup>115</sup> M. Nur Sholikin, 'Never Mind Industry 4.0, Domestic Workers are already Dehumanized', *Indonesia at Melbourne* (Indonesia, 9 April 2019) <<https://indonesiaatmelbourne.unimelb.edu.au/never-mind-industry-4-0-domestic-workers-are-already-dehumanised/>> accessed 7 July 2020.

<sup>116</sup> Jack Britton, 'Indonesia's Domestic Workers Need Urgent Protection.' *The Jakarta Globe* (Indonesia, 21 November 2018) <<https://jakartaglobe.id/opinion/indonesias-domestic-workers-need-urgent-protection/>> accessed 10 June 2020.

<sup>117</sup> Muh. Rasyidi Bakry, 'Indonesia: Respecting the Role of Domestic Workers in Indonesia through Legal Protection', *IDWFED*, (Indonesia, 18 May 2017) <<https://idwfed.org/en/updates/indonesia-respecting-the-role-of-domestic-workers-in-indonesia-through-legal-protection>> accessed 7 July 2020.

<sup>118</sup> World Bank, 'Indonesia's Global Workers: Juggling Opportunities and Risks', (2017) 31, <<http://documents.worldbank.org/curated/en/946351511861382947/pdf/121691-Indonesias-Global-Workers-Juggling-Opportunities-Risks.pdf>> accessed 7 July 2020.

<sup>119</sup> World Bank, 'Indonesia's Global Workers: Juggling Opportunities and Risks', (2017) 31, <<http://documents.worldbank.org/curated/en/946351511861382947/pdf/121691-Indonesias-Global-Workers-Juggling-Opportunities-Risks.pdf>> accessed 7 July 2020.

<sup>120</sup> Tirtawening, 'Indonesian Migrant Domestic Workers Lack Protection: How Can Legal Academics Help?', *The Conversation*, (Indonesia, 26 March 2019) <<https://theconversation.com/indonesian-migrant-domestic-workers-lack-protection-how-can-legal-academics-help-103785>> accessed 7 July 2020.

<sup>121</sup> Malahayati, 'Legal Protection on Indonesian Domestic Workers in Malaysia: From Actors' View' (2015) 43 *JL Policy & Globalization* 75.

Protection of Indonesian Migrant Workers, which provides basic rights for migrant workers employed abroad.<sup>122</sup> Although not substantial, this is a significant development for migrant domestic workers when their local counterparts continue to work without any legislative protection. In fact, even the Draft of Employment Development and Protection Law, 2000, which included migrant domestic workers, did not refer to those working in Indonesia itself.<sup>123</sup>

Even before the reforms in 2017, Indonesian legislation has failed to adequately address the instances of domestic abuse, sexual assault and physical abuse that migrant women have suffered in the United Arab Emirates,<sup>124</sup> in Saudi Arabia,<sup>125</sup> in Malaysia<sup>126</sup> and in Singapore<sup>127</sup> among other countries.<sup>128</sup> A visceral response of the Indonesian government to migrant domestic workers' abuse has been to periodically ban migratory traffic to countries deemed too dangerous.<sup>129</sup> These bans often prove most harmful for the very migrant domestic workers they seek to protect, whose families rely on their earnings. For instance, the moratoria against Malaysia in 2009 (lifted in 2011), Saudi Arabia in 2011, and a host of other countries in 2015, had the unintended consequences of increasing unemployment among low-educated women in the domestic labour market and pushing such women into undocumented migration, exposing them to even higher risks.<sup>130</sup>

Ad-hoc bans are band-aid solutions for the government, which may be reluctant to develop policies with permanent consequences that threaten to disturb Indonesia's relationships with

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<sup>122</sup> Law of the Republic of Indonesia Number 18 of 2017 on the Protection of Indonesian Migrant Workers.

<sup>123</sup> Triana Sofiani and Sudarsono and Rachmad Syafa and M Ali Syafa, 'Legal Status of Domestic Workers in Indonesia in Labor Law and the Implication on Employment Relationship' (2014) 30 *JL Pol'y & Globalization* 33, 38.

<sup>124</sup> HRW, 'Dreams Turned into Nightmares: Indonesian Domestic Workers in the UAE', *Human Rights Watch* (Indonesia, 23 October 2014) <<https://www.hrw.org/news/2014/10/23/dreams-turned-nightmares-indonesian-domestic-workers-uae>> accessed 7 July 2020.

<sup>125</sup> Srinivas Mazumdar, 'Saudi Execution Spotlights Domestic Workers Vulnerable Lives', *DW* (Asia, 2 November 2018) <<https://www.dw.com/en/saudi-execution-spotlights-domestic-workers-vulnerable-lives/a-46137942>> accessed 7 July 2020.

<sup>126</sup> The Straits Times, 'Indonesia Mulls Ban on Sending Maids to Malaysia after Abuse Case', *The Straits Times*, (Jakarta, 17 February 2018) <<https://www.straitstimes.com/asia/se-asia/indonesia-mulls-ban-on-sending-maids-to-malaysia-after-abuse-case>> accessed 7 July 2020.

<sup>127</sup> Ann-Christin Herbe, 'Singapore Domestic Workers Suffer Exploitation and Abuse', *DW* (Asia, 28 March 2019) <<https://www.dw.com/en/singapore-domestic-workers-suffer-exploitation-and-abuse/a-48101632>> accessed 7 July 2020.

<sup>128</sup> Athira Northajuddin, 'Indonesia's Abused Domestic Helpers', *The ASEAN Post*, (Indonesia, 26 February 2020) <<https://theaseanpost.com/article/indonesias-abused-domestic-helpers>> accessed 7 July 2020.

<sup>129</sup> Hillary Whiteman, 'Indonesia Maid Ban won't work in Mideast, Migrant Groups Say', *CNN*, (6 May 2015) <<https://edition.cnn.com/2015/05/06/asia/indonesia-migrant-worker-ban/index.html>> accessed 7 July 2020.

<sup>130</sup> World Bank, 'Indonesia's Global Workers: Juggling Opportunities and Risks', (2017) page 31, <<http://documents.worldbank.org/curated/en/946351511861382947/pdf/121691-Indonesias-Global-Workers-Juggling-Opportunities-Risks.pdf>> accessed 7 July 2020.

other countries.<sup>131</sup> Any permanent ban would after all result in decreased remittance flows for Indonesia. For instance, the supposed inferiority of Indonesian Islam plays a role in the Indonesian government's recalcitrance to directly challenge Saudi policies affecting Indonesian domestic workers.<sup>132</sup> Similarly Muslim-majority Malaysia, fearing the spread of Islamist terrorism through the illegal Indonesian migrant worker network has often demonized Indonesian domestic workers (despite hosting staggering numbers of documented Indonesian migrants).<sup>133</sup> Therefore, despite a glaring hole in policy reform, Indonesia has been unable to cohesively enact protections for its migrant domestic workers employed abroad.

### 3. THE FATE AND FAITH NARRATIVE: SIDE-STEPPING ACCOUNTABILITY

Research on migrant female domestic labour provides a thought-provoking insight into the social attitudes towards these women. Despite large-scale reliance on their earnings, migration of Indonesian women is still regarded with trepidation. In the course of conducting her research, one scholar found that migration was considered inappropriate for Muslim Indonesian women.<sup>134</sup> A study conducted in East Flores recorded the Catholic Church's disapproval of such migration and the disruption it created in Christian family life.<sup>135</sup> These religious attitudes determined migratory patterns of Indonesian women: fewer women migrate abroad from conservative regions in Indonesia such as Sumatra.<sup>136</sup>

Even where religious and social discourses do not find migration distasteful, Indonesian women consider (and are actively taught to consider) fate as the primary determinant of their migratory experience, which one scholar noted, revealed the extent to which recruitment agencies and government authorities controlled the information disseminated to migrant women workers.<sup>137</sup> By leaving their safety to fate, and their success to faith, recruitment

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<sup>131</sup> Ellen Prusinski, 'Because It is Our Fate: Migration Narratives and Coping Strategies among Indonesian Migrant Women Workers', (2016) 44 (4/5) *Asian Journal of Social Science* 485-515, 490.

<sup>132</sup> Silvey, R., 'Transnational Migration and the Gender Politics of Scale: Indonesian Domestic Workers in Saudi Arabia', (2004) 25(2) *Singapore Journal of Tropical Geography* 141-155.

<sup>133</sup> Marshall Clark, 'Labour Migration Flows and Regional Integration in Southeast Asia' in Juliet Pietsch and Marshall Clark (eds), *Migration and Integration in Europe, Southeast Asia, and Australia* (Amsterdam University Press 2015) 106.

<sup>134</sup> Ellen Prusinski, 'Because It is Our Fate: Migration Narratives and Coping Strategies among Indonesian Migrant Women Workers', (2016) 44 (4/5) *Asian Journal of Social Science* 485-515, 491.

<sup>135</sup> G. Hugo, 'Effects of International Migration on the Family in Indonesia' (2002) 11(1) *Asian and Pacific Migration Journal* 13-46.

<sup>136</sup> Ellen Prusinski, 'Because It is Our Fate: Migration Narratives and Coping Strategies among Indonesian Migrant Women Workers', (2016) 44 (4/5) *Asian Journal of Social Science* 485-515, 491.

<sup>137</sup> *ibid* 499.

agencies relinquished the responsibility of migrant women by perpetuating the idea that they were on their own in an unknown country.<sup>138</sup>

Despite being left responsible for themselves abroad, Indonesian migrant women are often reduced to symbols of nationalist pride: the political tussle between Indonesia and Malaysia is a prime example of how these women bear the burden of Indonesia's honour.<sup>139</sup> Despite systemic abuse against them, Indonesian women are expected to conduct themselves with due regard to their national and religious identities. Even in media reportage, when covering the physical and sexual abuse against such migrant women, they are often portrayed as the heroic victims of the protagonist states tussle.<sup>140</sup> The focus therefore is not the lacking legal protections which allow such abuse to occur, but rather the necessity of fulfilling their roles as obedient domestic workers. These soft narratives, contextualized against lacking legal protections, such as the lack of social security, the lack of legal redress, inadequate action against domestic and sexual abuse, and poor conditions of work, take away from the agency and independence of Indonesian migrant female domestic workers.

#### 4. COMPARING DOMESTIC LABOUR IN INDONESIA AND THE PHILIPPINES

Given that Indonesia and Philippines are two of the highest labour-exporting countries of the Asia Pacific, Indonesian migrant female domestic workers often compete directly with their Filipina counterparts in most high-income, labour-importing economies of the world. As discussed in the next section, the Philippines have adopted the labour migration of Filipina domestic workers as an economic strategy, resulting in better education, training and orientation of these women. As a result, certain traits are considered to be stereotypically Filipina, and are actively perpetrated by recruitment agencies, governments and Filipina workers themselves, in order to ensure better work opportunities for themselves.

One scholar found that when Filipina domestic workers were agreed to be better educated, English-speaking and more modern, these qualities were not attributed to the individuals' merit, but as cultural traits of all Filipinas.<sup>141</sup> This created an automatic polarity with any other nationality of foreign domestic workers: Filipinas were inherently talented, business-minded

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<sup>138</sup> *ibid* 501.

<sup>139</sup> Mary Austin, 'Defending Indonesia's Migrant Domestic Workers', in Ward Berenschot, Henk Schulte Nordholt and Laurens Bakker (eds), *Citizenship and Democratization in Southeast Asia* (Brill 2016) 273.

<sup>140</sup> *ibid* 273-74.

<sup>141</sup> Andrea Soco, 'Rationalities of Identity: 'Sameness' and 'Difference' among Filipino Migrant Domestic Workers' (2011) 59 *Philippine Sociological Review* 67-86, 72.

and attentive while Indonesians were money-minded, content with their work and less attentive.<sup>142</sup> This ‘othering’ is significant because even in destination countries like Singapore, Malaysia or even the Gulf states, where systemic abuses against Indonesian and Filipina maids are the same, these women do not interact in the same social networks. In Singapore for instance, although Filipina workers may have Indonesian friends, networking with other Filipinas was preferred and encouraged.<sup>143</sup>

On a global scale this is surprising because despite their cultural and nationalist differences, the migratory experiences of these women are largely similar. Both Indonesian and Filipina domestic workers who migrate for employment face social or religious pressures back home, both are subject to varying levels of inadequate government protection and both are required to subscribe to a pre-determined identity of the ideal domestic worker when employed abroad.

#### **D. PHILIPPINES: TREATING LABOUR EXPORT AS AN ECONOMIC STRATEGY**

In the Philippines, overseas workers remitted close to USD 28.2 billion in 2017.<sup>144</sup> The Philippines is one of the foremost labour exporting countries in the Asia Pacific region, with a rich history of international migration. Women migrate to work as domestic help in other countries to provide for their families who rely heavily on their remittances. In 2019, there were as many as 172,000 Filipina women who migrated abroad for work.<sup>145</sup> Yet female migrants are victims of nearly all forms of abuse, including rape, sexual harassment, and physical abuse.<sup>146</sup>

##### **1. A BRIEF HISTORY OF MIGRATION IN PHILIPPINES**

The migration of workers abroad dates back to the 16<sup>th</sup> century colonization of the Philippines by Spain. Spain pursued mercantilism by enforcing a stringent forced labour policy, or *repartimiento* system where thousands of Filipinos served in the construction and crew of

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<sup>142</sup> *ibid.*

<sup>143</sup> *ibid.* 84.

<sup>144</sup> Cliff Venzon, ‘Remittances sent home by Filipino Workers hit Record \$28.1bn’, *Nikkei Asian Review* (Manila, 15 February 2018) <<https://asia.nikkei.com/Economy/Remittances-sent-home-by-Filipino-workers-hit-record-28.1bn2>> accessed 7 July 2020.

<sup>145</sup> United Nations Women, ‘Migrant Workers lacking Work Benefits learn how to save in the Philippines’, *United Nations*, (Philippines, 6 March 2019) <<https://www.unwomen.org/en/news/stories/2019/3/feature-story-migrant-workers-lacking-work-benefits-learn-how-to-save-in-the-philippines>> accessed 7 July 2020.

<sup>146</sup> United Nations Women, ‘Filipino Women Migrant Workers: Factsheet’, *United Nations*, <<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2016/filipino-women-migrant-workers-factsheet.pdf?la=en&vs=2736>> accessed 7 July 2020.

ocean going galleons. Oftentimes on these long journeys, Filipinos would desert at various ports of call, leading to the first sizeable migration movement in the country.<sup>147</sup>

Migration streamlined when America acquired the Philippines in the Spanish-American War in 1898. Three classic migratory routes of the time were education, militarization and recruitment of labour.<sup>148</sup> One scholar observed that capital mobility created new conditions for labour mobility.<sup>149</sup> Poverty, unemployment or overpopulation while compelling, were not sufficient reasons for migration on their own. It was the internationalization of production that led to second wave of migration in the Philippines. As a result, the American recruitment of Filipino labour in the 19<sup>th</sup> century effectively set into permanence the Filipino migration system of today. The feminisation of international migration began in the 1990s with close to 75% of women seeking employment in domestic work in five countries abroad.<sup>150</sup> Since then, overseas employment has burgeoned into a thriving economic industry for the Philippines, with migrant Filipinas working as domestic labour in countries across the world.

## 2. REGULATING THE EXPORT OF DOMESTIC LABOUR

The key legislation in protecting domestic workers rights is the Labor Code of the Philippines, 1974 ('Labor Code'), which was heralded as the new Magna Carta of Labor won by the Filipino working class when enacted. In truth, the Labor Code in tandem with several Presidential decrees, favoured foreign investors and landed oligarchy, even dismissing unfair labour practices and restricting strikes or public assembly.<sup>151</sup> This reflected the economic strategy of the time: discursive marketing of a cheap and docile labour force prevented from unionizing and striking to be seen as internationally attractive.

The nationalization of labour so to speak, was visible in Article 22 of the Labor Code which continues to require all Filipino workers to remit a portion of the foreign exchange earnings to their families, dependents and beneficiaries in Philippines.<sup>152</sup> For domestic workers, the remittance rate is 50%. In 2018, the Philippines, whose international remittance amounted to

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<sup>147</sup> James A. Tyner, *The Philippines: Mobilities, Identities, Globalization*, (Taylor & Francis Group, 2008) 15-16.

<sup>148</sup> *ibid* 26-27.

<sup>149</sup> Saskia Sassen, *The Mobility of Labour and Capital*, (Cambridge: Cambridge University Press 1988).

<sup>150</sup> James A. Tyner, *The Philippines: Mobilities, Identities, Globalization*, (Taylor & Francis Group, 2008) 38-39.

<sup>151</sup> *ibid* 50.

<sup>152</sup> Article 22, Labour Code of the Philippines, 1974.



USD 34 billion, was the fourth largest remittance recipient globally after India, China and Mexico.<sup>153</sup>

The international migration of labour provides a twist of sorts to the mobility of capital: through mandatory remittances the Philippines uses its migrant workers as a form of mobile capital accumulation by tapping into locations of surplus capital. Given that migrant workers are placed by the government in localized labor markets abroad, the Philippines is able to tap into a highly specialized and flexible system of capital accumulation at shifting sites across the world.<sup>154</sup> The creation of the Philippine Overseas Employment Administration ('POEA') to strengthen the regulatory functioning of employment abroad, was perceived as explicitly exercising overseas employment as a development strategy.<sup>155</sup>

However, in 1995, the execution of Flor Contemplacion, a Filipina FDW working in Singapore, for the double murder of another Filipina domestic worker and a young Singaporean boy, highlighted the pressing need to address the rights of Filipina domestic workers plight abroad.<sup>156</sup> This was followed shortly by the trial of Sara Balabagan, a female domestic worker employed in the United Arab Emirates who was charged with the murder of her employer after he raped her.<sup>157</sup> The public outcry of these cases led to massive restructuring of overseas employment with the Republic Act 8042 ('RA 8042') in 1995. Interestingly, in a stark departure from the prevalent attitude during the enactment of the Labour Code, the RA 8042 asserted that overseas employment was not a development strategy for the Philippines.<sup>158</sup>

This has resulted in greater consciousness of workers rights. Employment contracts certified by the government now contain grievance procedures for contractual violations.<sup>159</sup> Where disputes remain unresolved overseas, migrant workers are permitted to file monetary claims against their employers, when they return to Philippines, before the National Labour Relations

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<sup>153</sup> World Bank, 'Migration and Remittances: Recent Developments and Outlook, Migration and Development Brief 31', (World Bank Group and KNOMAD 2019) <<https://www.knomad.org/sites/default/files/2019-04/Migrationanddevelopmentbrief31.pdf>> accessed 7 July 2020.

<sup>154</sup> James A. Tyner, *The Philippines: Mobilities, Identities, Globalization*, (Taylor & Francis Group, 2008), 60.

<sup>155</sup> *ibid.*

<sup>156</sup> Stephen Vines, 'Philippines set for 'Innocent' verdict on Hanged Maid', *The Independent*, (Manila, 2 April 1995) <<https://www.independent.co.uk/news/world/philippines-set-for-innocent-verdict-on-hanged-maid-1613888.html>> accessed 7 July 2020.

<sup>157</sup> Bev Llorente, 'Where is Sarah Balabagan Now?' *ABS-CBN*, (Las Vegas, 24 August 2017) <<https://news.abs-cbn.com/overseas/08/24/17/where-is-sarah-balabagan-now>> accessed 7 July 2020.

<sup>158</sup> James A. Tyner, *The Philippines: Mobilities, Identities, Globalization*, (Taylor & Francis Group, 2008), 71.

<sup>159</sup> Robyn Magalit Rodriguez, *Migrants for Export: How the Philippine State Brokers Labor to the World*, (University of Minnesota Press 2010) 121.

Commission who have original and exclusive jurisdiction in this regard.<sup>160</sup> The POEA also has an Adjudication Branch to encourage mediation between workers and foreign employers, in cases of recruitment violations.<sup>161</sup>

### 3. THE ROLE OF BILATERAL TREATY RELATIONS IN NEGOTIATING BETTER RIGHTS FOR FEMALE DOMESTIC WORKERS

For the Philippines to maintain their outflow of international migrant workers, bilateral relations go a long way. Officially pursued as labor diplomacy, this refers to the formalized state-to-state relations the Philippine state engages in to develop markets for Philippine labour.<sup>162</sup> Labour market information generated through labour reports allows the government to proactively place workers in appropriate markets. The marketing branch of the POEA oversees marketing missions designed to boost the outflow of labour, by organizing meetings between recruitment agencies and prospective foreign employers, or by visiting existing employers.<sup>163</sup> Labour diplomacy is designed to facilitate better mobilization processes and to ensure liberalization of entry regulations in host countries.

Although bilateralism solidifies international migration, it requires the government to maintain a precarious balance between labour interests and international relations. While the Philippines has bilateral treaties with several labour-receiving countries, in accordance with its labour diplomacy, it has also attempted to cooperate with labour exporting countries, to arrive at a mutually beneficial understanding. One of these strategies includes ‘regional complementation’: for instance, when the Philippines and Vietnam, another labour-exporting country, are engaged in market promotions, the Philippines offers to prospective employers skilled and managerial staff, while Vietnam offers unskilled labour.<sup>164</sup>

The government also has its own recruitment agency, the Government Placement Branch (‘GPB’), which deals with foreign states to secure migrant labour for government-to-government hiring, instead of leaving potentially huge government labour contracts entirely in

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<sup>160</sup> Republic Act 8042, Section 10 (Philippines).

<sup>161</sup> Robyn Magalit Rodriguez, *Migrants for Export: How the Philippine State Brokers Labor to the World*, (University of Minnesota Press 2010) 121.

<sup>162</sup> *ibid* 67.

<sup>163</sup> Anna Romina Guevarra, *Marketing Dreams, Manufacturing Heroes: The Transnational Labor Brokering of Filipino Workers*, (Rutgers University Press 2009) 42ff.

<sup>164</sup> Robyn Magalit Rodriguez, *Migrants for Export: How the Philippine State Brokers Labor to the World*, (University of Minnesota Press 2010) 70.

the hands of private players.<sup>165</sup> Another crucial factor in Philippine bilateral relations, is the state's ability to repatriate workers when they choose to become vexatious to the host state.<sup>166</sup>

This is not to say that labour diplomacy pursued by the government is in the workers' favour. For instance the POEA's *Rules and Regulations* require wages for migrant workers to be not less than the minimum limit set forth in a bilateral agreement with a particular country, or the minimum wage limit in Philippines, whichever is higher.<sup>167</sup> In the Brunei factory workers case where Filipina workers demanded a higher wage, the Philippines eventually acquiesced to Brunei's demands, to the apparent detriment of its workers.<sup>168</sup> This highlighted how contradictory the rights that the Philippine government extends to its overseas workers are. In the Brunei factory workers case, the state refused to assert the validity of the very contracts that accorded workers their so-called protection.

#### 4. IDENTITIES OF FILIPINA MIGRANT DOMESTIC WORKERS IN DESTINATION COUNTRIES

The effect of migration on Filipina workers' must be examined in two ways: first in context of government discourse, which frames migration as an essential feature of their identity and secondly in context of its real world impact. The RA 8042, enacted after the highly publicized cases of Flor Contemplacion and Sarah Balabagan, requires mandatory skills training for domestic workers who are categorised as vulnerable workers.<sup>169</sup> Yet it has been seen that the apparently gender-sensitive policies of the government have less to do with the protection of women migrants and more with the regulation of migrants themselves.<sup>170</sup> For instance, one account of the Pre-Departure Orientation Seminar ('PDOS'), conducted by the POEA for female migrant workers' training, has alarming observations.<sup>171</sup> In the author's experience, the PDOS was conducted with the object of orienting female migrants to familial and national responsibility. Migrants were taught to accept employment terms without expecting too much state intervention with the reasoning that it is better for more migrants to work on lower wages,

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<sup>165</sup> Anna Romina Guevarra. *Marketing Dreams, Manufacturing Heroes: The Transnational Labor Brokering of Filipino Workers*, (Rutgers University Press 2009) 42ff.

<sup>166</sup> *ibid* 73.

<sup>167</sup> Ryan Jeremiah D Quan and Cathleen Terry E Caga-anan, 'Decent Work for Domestic Workers in the Philippines: A Look at Standards and Issues' (2015) 60 *Ateneo LJ* 126.

<sup>168</sup> Robyn Magalit Rodriguez, *Migrants for Export: How the Philippine State Brokers Labor to the World*, (University of Minnesota Press 2010), 130.

<sup>169</sup> Republic Act 8042 Section 2(g) (Philippines).

<sup>170</sup> Anna Romina Guevarra. *Marketing Dreams, Manufacturing Heroes: The Transnational Labor Brokering of Filipino Workers*, (Rutgers University Press 2009) 42ff.

<sup>171</sup> Robyn Magalit Rodriguez, *Migrants for Export: How the Philippine State Brokers Labor to the World*, (University of Minnesota Press 2010) 105.

than fewer migrants to work abroad on higher earnings. Similarly migrants were directed towards representing the Philippine nationality while abroad, an onus that required them to be polite, deferential and socially and sexually circumspect.

This is not without reason. The Gancanyo Commission established to review the impact of migration after the Flor Contemplacion and Sarah Balabagan cases, remarked of the crisis: *Our nation has gained the embarrassing reputation that we are a country of domestic help, entertainers and prostitutes.*<sup>172</sup> Indeed surveys conducted by the Social Weather Stations have colluded in presenting women's migration as a national shame even though objective figures don't necessarily infer similarly.<sup>173</sup> These surveys are influential in analyzing the real world impact of migration of Filipina workers. Indeed, it is difficult for Filipina women to be assertively independent abroad while there is growing concern of the 'social costs' of international female migration in the Philippines.<sup>174</sup> In the aforementioned survey, most respondents opined that the absence of Filipina women from their families led to more problems. This social cost translates to absentee mothering, distant filial relations and a general presumption that family stability suffers in the absence of a feminine mother figure.<sup>175</sup> One scholar even notes that female migrant workers are seen as interpretative subjects with fluid identities dependent on social location and geographical context.<sup>176</sup>

That Filipinas subscribe to pre-determined identities is highlighted even further by the cyber recruitment of labour that most placement agencies invest in.<sup>177</sup> Labour recruiters have been observed to engage in agency aggrandizement with creative websites with photographs and personal data designed to showcase the best products that is, female domestic workers.<sup>178</sup> Prospective employers can shortlist domestic help by qualities (obedient, hardworking, docile, reliable are some of the most stressed virtues) and by racial, gendered or even sexual

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<sup>172</sup> Ruby Palma Beltran and Gloria F. Rodriguez, *Filipino Migrant Women Workers: At the Crossroads and at Beijing*, (Philippines: Giraffe Books 1996).

<sup>173</sup> Ma. Alcestis Abrera Mangahas, 'Public Attitudes Towards Female Overseas Workers: Implications for Philippine Migration Policy' (Quezon City, Philippines, Social Weather Stations 1994) 18.

<sup>174</sup> Rhacel Salazar Parrenas, 'Migrant Filipina Domestic Workers and the International Division of Reproductive Labour', (2000) 14(4) *Gender and Society* 560-580.

<sup>175</sup> Pei Chia Lan, 'Maid or Madam? Filipina Migrant Workers and the Continuity of Domestic Labour', (2003) 17(2) *Gender and Society: Global Perspectives on Gender and Carework*, 187-208.

<sup>176</sup> Rationalities of Identity: 'Sameness' and 'Difference' among Filipino Migrant Domestic Workers<sup>[17]</sup>, Andrea Soco, *Philippine Sociological Review*, Vol. 59 (2011), 67-86, 68.

<sup>177</sup> Anna Romina Guevarra. *Marketing Dreams, Manufacturing Heroes: The Transnational Labor Brokering of Filipino Workers*, (Rutgers University Press 2009) 51ff.

<sup>178</sup> Ryan Jeremiah D Quan and Cathleen Terry E Cagaanan, 'Decent Work for Domestic Workers in the Philippines: A Look at Standards and Issues' (2015) 60 *Ateneo LJ* 126.

stereotypes.<sup>179</sup> Often these agencies show domestic workers in uniforms so that applicants look the part and conform to the agencies' body disciplinary practice.<sup>180</sup> As a result, Filipina migrant workers often carry the burden of government policies, societal expectation and employment practices that appear to be gender sensitive, but in reality shore up traditional hierarchies of how they must look or behave in order to facilitate international migration.

## 5. FRAMING ACTIVISM AND ACCOUNTABILITY FOR DOMESTIC WORK IN PHILIPPINES

Given how reliant Philippines is on its Filipina migrant domestic worker force, NGOs create government accountability by framing domestic work as a dignified type of work done by human workers with legitimate needs.<sup>181</sup> The Asian Migrant Centre (AMC) has actively pushed to frame domestic work as legitimate work, with regulated work hours and workplace safety in accordance with international labour standards. Migrant empowerment is central to the AMC's economic re-integration program, which addresses the economic necessities of migration that compel female workers to work outside the Philippines.<sup>182</sup>

In the Philippines, NGOs use migrant empowerment to indicate how poor economic infrastructure effectively pushes Filipina domestic workers to seek work abroad due to a stark lack of livelihood opportunities at home.<sup>183</sup> Local NGOs have demanded better governance and livelihood opportunities for Filipinas in Philippines itself. Early organisations focused on crisis relief for workers returning to the Philippines in distress. They advocated better policy: they campaigned against Executive Order 857, which compelled migrant workers to send money remittances through Philippine banks and for the successful ratification of the Overseas Absentee Voting Law in 2003.<sup>184</sup> As per the latter, Filipina workers employed abroad have a significant say in political elections, and local NGOs often take up electoral issues by campaigning actively for progressive candidates. The public furor after the Flor Contemplacion case also resulted in the formation of Migrante International, a global alliance of overseas Filipinos with 130 organisations in 23 countries. Like many of the local organizations in

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<sup>179</sup> James A. Tyner, *The Philippine: Mobilities, Identities, Globalization*, (Taylor & Francis Group, 2008) 127-28.

<sup>180</sup> Nicole Constable, *Maid to Order in Hong Kong: Stories of Filipina Workers* (Cornell University Press, 1997) 70.

<sup>181</sup> MA Glenda Lopez-Wui and Dina Delias, 'Filipino Domestic Workers Rights and Welfare: Discursive Framings by NGOs in Hong Kong and the Philippines' <sup>[11]</sup><sub>[SEP]</sub> (2015) 63 *Philippine Sociological Review* 16.

<sup>182</sup> *ibid* 18.

<sup>183</sup> Asha D'souza, *Moving Towards Decent Work for Domestic Workers: An Overview of the ILO's Work*, (ILO 2010)

<sup>184</sup> MA Glenda Lopez-Wui and Dina Delias, 'Filipino Domestic Workers Rights and Welfare: Discursive Framings by NGOs in Hong Kong and the Philippines' <sup>[11]</sup><sub>[SEP]</sub> (2015) 63 *Philippine Sociological Review* 16, 24.

Philippines, Migrante International contextualizes migration in the larger structural issue of the State's misguided economic blueprint to facilitate national industrialization and agricultural productivity.<sup>185</sup>

#### **E. DOMESTIC WORKERS' REGULATION IN SINGAPORE: LESS WOMAN, MORE WORKER.**

In Singapore, domestic work is performed by migrant female workers from labour-exporting countries like the Philippines, Indonesia or Vietnam. Nearly one in six households employ a female foreign domestic worker.<sup>186</sup> Data reveals a 27% increase in the number of female foreign domestic workers (hereinafter 'FDW') employed in Singapore, from 201,000 in the year 2010, to 255,800 in 2019.<sup>187</sup> According to Singapore's Ministry of Manpower, FDWs made up 18% of the total foreign workforce in Singapore in 2019.<sup>188</sup> With domestic work largely outsourced to foreign migrants, Singapore is able to not only maintain a critical competitive edge over competing economies but also create better jobs for its own citizens.<sup>189</sup> As a result, this section does not cover domestic work performed by citizens. This citizenship divide is stark, and is only the tip of the problematic iceberg that is FDW's strict regulation in Singapore.

##### **1. CITIZENSHIP COMPLICATIONS: THE INHERENT OTHERING OF FDWS**

The most stringent challenge that FDWs face in Singapore, is that of citizenship status. Given that most rights and protections are inextricably linked to citizenship, the Singapore government is acutely selective in deciding whom to admit as permanent residents and naturalized citizens.<sup>190</sup> FDWs enter Singapore with work permits from certain approved source

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<sup>185</sup> *ibid* 22.

<sup>186</sup> Ann Brooks and Theresa Devasahayam, *Gender, Emotion and Labour Markets: Asian and Western Perspectives*, (Taylor & Francis Group 2011) 45.

<sup>187</sup> Nabilah Awang and Wong Pei Ting, 'The Big Read: As Maids become a Necessity for Many Families, Festering Societal Issues could come to the Fore' *CNA Singapore*, (Singapore, 4 November 2019) <<https://www.channelnewsasia.com/news/singapore/maids-foreign-domestic-workers-singapore-necessity-families-12059068>> accessed 7 July 2020. <sup>[1]</sup><sub>[SEP]</sub>

<sup>188</sup> Ministry of Manpower, 'Foreign Workforce Numbers', (Government of Singapore) <<https://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers>> accessed 7 July 2020.

<sup>189</sup> Eugene K B Tan, 'Managing Female Foreign Domestic Workers in Singapore: Economic Pragmatism, Coercive Legal Regulation, or Human Rights', (2010) 43 *Isr L Rev.* 99, at 104, relying on Home Affairs Minister's written answer of Oct. 20, 2008 to a parliamentary question whether future immigration policies would be tightened in view of recent population statistics which revealed that citizens comprise only 65 per cent of the total population, and the need for a rooted local populace in Singapore.

<sup>190</sup> Ayelet Shachar, 'The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes', (2006) 81 *N.Y.U. L. Rev.* 148.

countries.<sup>191</sup> As transient workers, with renewable short-term employment contracts, FDWs cannot become citizens of Singapore either through permanent residence or citizenship.<sup>192</sup> Political theorist Joseph Carens has argued that FDWs should be entitled to citizenship if they have resided in Singapore for an extended period of time: length of residence, not legal status, is the key moral variable. The longer the stay, he finds, the stronger the moral claim to most legal rights.<sup>193</sup>

The Singapore government on the other hand militates against this exact legal-moral claim to rights by adopting a contract-based approach in dealing with migrant workers in general, and FDWs in particular.<sup>194</sup> Given that a contract-based approach is simply transactional, apprehensions of justice, equality, human and moral rights which are linked to political membership of the country, become redundant. FDWs cannot exercise legal rights as they are not citizens or residents of Singapore. A contract-based approach is regulatory in nature, unlike a rights-based approach, thus paving the way for the second, more abrasive set of hurdles that FDW's face in Singapore.

## 2. RIGHTS V REGULATION: A LOSING BATTLE FOR FDWS

FDWs are not citizens or even permanent residents in Singapore. Their services are purely transactional, based on a quid pro quo that allows them to escape their poverty-stricken hometowns to earn their livelihoods in Singapore. The contractual approach thus justifies a different regime for FDWs, one which is governed by regulations and where rights are precluded from the outset. This also leads to several inherently problematic regulations that disadvantage FDWs.

For instance, FDWs are required by law to reside at the homes of their employers, which shores

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<sup>191</sup> The approved source countries include Bangladesh, Cambodia, Hong Kong, India, Indonesia, Macau, Malaysia, Myanmar, Philippines, South Korea, Sri Lanka, Taiwan, and Thailand, see <<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/fdw-eligibility>> accessed 7 July 2020.

<sup>192</sup> Eugene K B Tan, 'Managing Female Foreign Domestic Workers in Singapore: Economic Pragmatism, Coercive Legal Regulation, or Human Rights' (2010) 43 *Isr L Rev* 99, 109.

<sup>193</sup> Joseph H. Carens, 'Immigration, Democracy, and Citizenship' in Oliver Schmidtke & Saime Ozcurumez (eds) *Of States, Rights, And Social Closure: Governing Migration And Citizenship* (Palgrave Macmillan 2008) 18.

<sup>194</sup> Eugene K B Tan, 'Managing Female Foreign Domestic Workers in Singapore: Economic Pragmatism, Coercive Legal Regulation, or Human Rights' (2010) 43 *Isr L Rev* 99, 109.

up their inferior and separate status.<sup>195</sup> Work-permit holders like FDWs are not permitted to bring their spouses and children to live in Singapore.<sup>196</sup> More worryingly however, unlike other migrant holders, FDWs are excluded from Singapore's Employment Act,<sup>197</sup> with the catastrophic result that FDWs have neither any fixed ceilings for remuneration, leaves, working conditions nor any leeway for collective bargaining.<sup>198</sup> The Employment of Foreign Manpower Act, simply lays down that employers must provide adequate rest and meals for their FDWs, and ensure work safety, proper housing and prompt salary payment, without laying down any specificities for the same.<sup>199</sup> These questions are left to be negotiated between the individual FDW and her prospective employer.

The Manpower Ministry of Singapore defends these conditions on the grounds that it is not practical to regulate specific aspects of domestic work.<sup>200</sup> They argue that it would be difficult to enforce the terms of the Employment Act for domestic workers as they work in a home environment and the habits of households vary.<sup>201</sup> This is vexatious for several reasons. In a bid to control transient workers in the country, the government requires these employers to post a SGD 5,000 security bond for each FDW,<sup>202</sup> to ensure that employers are responsible for their complying with the conditions of her employment. This encourages employers to keep an exacting eye on their hired help, which often has troubling repercussions for FDWs.

Given the peculiar intersection of government action and lacking labour laws, not only are FDWs not seen in public spaces in Singapore, but also their voices are seldom heard.<sup>203</sup>

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<sup>195</sup>Ministry of Manpower, 'Conditions of Work Permits', (Government of Singapore) <<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/work-permit-conditions>> accessed 7 July 2020.

<sup>196</sup> *ibid.*

<sup>197</sup> The Employment Act of the Republic of Singapore, Ch. 91, (revised ed. 2009).

<sup>198</sup> However, Section 67 of the Employment Act provides that the Manpower Minister may apply the Act to domestic workers: The Minister may, from time to time by notification in the Gazette, apply all or any of the provisions of this Act with such modification as may be set out in the notification to all domestic workers or to any group, class or number of domestic workers and may make regulations to provide generally for the engagement and working conditions of domestic workers.

<sup>199</sup> The Employment of Foreign Manpower Act of the Republic of Singapore, Ch. 91A, (revised ed. 2009).

<sup>200</sup> Ministry of Manpower, 'Contracts and Safety Agreements for Foreign Domestic Worker', (Government of Singapore) <<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/contracts-and-safety-agreement>> accessed 7 July 2020.

<sup>201</sup> Ministry of Manpower, 'Employers' Guidelines: Employment Laws and Contracts', (Government of Singapore) <<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide>> accessed 7 July 2020.

<sup>202</sup> Ministry of Manpower, 'Security Bond Requirements for Foreign Domestic Worker', (Government of Singapore) <<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/security-bond>> accessed 7 July 2020.

<sup>203</sup> Brenda S.A. Yeoh and Kavitha Annadurai, 'Civil Society Action and the Creation of "Transformative Spaces" for Migrant Domestic Workers in Singapore' (2008) 37 *Women Studies* 548, 550.



Government regulation goes a long way in ensuring that FDWs do not acquire citizenship either through marriage or motherhood. FDWs are required to undergo a biannual examination (6ME) by a registered Singapore doctor to screen for infectious diseases and pregnancies.<sup>204</sup> A FDW who fails this examination is immediately repatriated, as giving birth in Singapore would contravene the Work Permit regulations of the FDW.<sup>205</sup> Under Singapore's infamous marriage restriction policy, transient workers like FDWs are not permitted to enter into any form of marriage under any law, religion, custom or usage with a Singapore Citizen or Permanent Resident in or outside Singapore without the prior approval of the Controller [of Immigration], while he/she holds a Work Permit, and also after his/her Work Permit has expired or has cancelled or revoked.<sup>206</sup> In the face of growing human rights concerns, the Ministry of Manpower has once again returned to the citizenship defense to justify this draconian policy: *Singaporeans do have human rights to be able to look after ourselves and manage our limited resources and to ensure that those legitimate Singaporeans would be well looked after.*<sup>207</sup> As FDWs are not citizens, their rights are automatically excluded from the state's purview, and any policy in restriction of their marriage or child-bearing rights, is viewed as a regulation to serve the stringent population control policy that Singapore practices.<sup>208</sup>

What has been taken relatively seriously in the recent past are cases of severe abuse of FDWs. In 1998, in response to an increasing spike in cases of 'maid abuse' cases, the Singapore Parliament amended the Penal Code.<sup>209</sup> The Minister for Home Affairs has observed that while all employers had an obligation to treat their maids humanly and decently, the abuse of FDWs is damaging to Singapore's international reputation and bilateral relations with other countries.<sup>210</sup> It is revealing to see how influential the lack of citizenship can be for FDWs. Without citizenship, there is little scope for the realization of rights even in cases of physical and sexual abuse against FDWs. As a result, it is international relations which govern the

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<sup>204</sup> Ministry of Manpower, 'Six Monthly Medical Examination (6ME) for Foreign Domestic Worker', (Government of Singapore) <<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/six-monthly-medical-examination>> accessed 7 July 2020.

<sup>205</sup> *ibid.*

<sup>206</sup> Ministry of Manpower, 'Work Permit Conditions', (Government of Singapore) <<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/work-permit-conditions>> accessed 7 July 2020.

<sup>207</sup> Parliamentary Debates Singapore Official Report, Vol. 78, col. 666 (Sep. 21, 2004) per Senior Parliamentary Secretary of the Ministry of Manpower, Mr Hawazi Daipi.

<sup>208</sup> *ibid.*

<sup>209</sup> The Penal Code of the Republic of Singapore, Ch. 224, (revised ed. 2008).

<sup>210</sup> Parliamentary Debates Singapore Official Report, Vol. 68, cols. 1923-1924 (Apr. 20, 1998) per Minister for Home Affairs, Mr Wong Kan Seng.

discourse against such abuse, rather than the abuse itself.

### 3. CLANDESTINE ACTIVISM AND QUIET NGOS: GESTURAL POLITICS IN SINGAPORE

Both the anti-citizenship and regulatory framework discourse impact the mobility of non-governmental organisations, which deliberately articulate the FDWs' interests in the language of welfare, humane treatment and dignity (as opposed to a rights discourse).<sup>211</sup> This is largely also due to the restrictions placed by the People's Action Party (PAP) which requires civil society organizations to support state-defined national values. The PAP delineates certain subjects as 'off limits' or as falling within 'out-of-bounds markers' (OB markers). These have been described as issues that are too sensitive to be discussed in public for fear of destabilising or jeopardising public peace and order.<sup>212</sup> For instance, given the traumatic experiences of most migrant workers, child abandonment and trafficking in babies, too sensitive to be broached publicly. Conversely, migrants' maternity may be discussed in the open but under covers other than legal rights.<sup>213</sup> This delineation is arbitrary and often confusing to follow. Faced with the prospect of inciting government wrath, most NGOs adopt a cautious approach in their activities.<sup>214</sup>

This attitude illustrates the difference between civil activism and civic responsibility. By compelling NGOs to regulate their own behaviour, the government ensures that they follow established cues and work under them rather than in opposition to them. NGOs engage in this self-regulation based on inherent conservatism shaped by a fear of being closed down.<sup>215</sup>

While the Constitution of Singapore guarantees freedom of association under Article 14, organizations exceeding ten members, and committees exceeding five members are required to be registered under the Societies Act or the Companies Act.<sup>216</sup> This allows the government to screen large groups, especially those whose activities relate to religious, ethnic, civil and

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<sup>211</sup> Cheah Wui Ling, 'Migrant Workers as Citizens within the ASEAN Landscape: International Law and the Singapore Experiment', (2009) 8 CHINESE J. INT'L L. 205 (2009).

<sup>212</sup> Eugene K B Tan, 'Managing Female Foreign Domestic Workers in Singapore: Economic Pragmatism, Coercive Legal Regulation, or Human Rights' (2010) 43 Isr L Rev 99, 120.

<sup>213</sup> Adriana Kemp and Nelly Kfir, 'Mobilizing Migrant Workers' Rights in "Nonimmigration" Countries: The Politics of Resonance and Migrants' Rights Activism in Israel and Singapore', (2016) 50(1) Law & Society Review, 82-116.

<sup>214</sup> Lenore Lyons, 'Dignity Overdue: Women's Rights Activism in support of Foreign Domestic Workers in Singapore', (2007) 35(3/4) Womens Studies Quarterly, 106-122.

<sup>215</sup> Lenore Lyons, 'Transient Workers Count Too? The Intersection of Citizenship and Gender in Singapore's Civil Society', (2005) 20(2) Sojourn: Journal of Social Issues in Southeast Asia, 211-12.

<sup>216</sup> Yayoi Tanaka, 'Singapore: Subtle NGO Control by a Developmentalist Welfare State' in S. Shigetomi (ed) The State and NGOs: Perspectives from Asia, (Singapore: Institute of Southeast Asian Studies 2002).

political rights, or the governance of Singapore. This is done as such groups may potentially give rise to law and order problems and carry out activities that may be prejudicial to the national interest. NGO's in particular are searchingly examined to ensure that they are not hijacked by foreign elements to serve a foreign agenda contrary to national interests.<sup>217</sup>

In the face of such severe scrutiny, NGOs are very prudent in framing issues of concern, often choosing not to expand on their positions regarding volatile issues like the protection of migrant women's reproductive rights. Similarly, NGOs also avoid overusing international conventions like the CEDAW.<sup>218</sup> This is largely because the government often presents human rights as a form of Western imperialism that stands in opposition to a local set of ethics of Asian values.<sup>219</sup> Such NGOs are disinclined to be seen as openly feminist, preferring instead to be advocates of equal rights and fair treatment.<sup>220</sup>

Despite these limitations, a draft proposal prepared for a Foreign Domestic Workers Bill<sup>221</sup> outlined six principal areas which required immediate addressing. Although the Bill was not released in re-drafted form and its status remains unclear, its suggestions are nonetheless instructive:

- A) A written contract of service between the foreign domestic worker and the employer that clearly states the conditions of employment, as well as the provisions that allow for termination of contract.
- B) A minimum wage for foreign domestic workers and a standardized means by which payment is calculated and dispensed,
- C) Stipulation of costs accruing to the foreign domestic worker and the employer,
- D) Stipulation of entitlements for the foreign domestic worker including rest periods and hours of work; leaves; accommodation; meals; and medical benefits,
- E) Codes of conduct for the foreign domestic worker and the employer,

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<sup>217</sup> Parliamentary Debates Republic of Singapore: Official Report. 2004. Part IV of First Session of Tenth Parliament, Vol. 77 (18). Singapore: Parliament of Singapore.

<sup>218</sup> James Gomez and Lenore Lyons, 'Moving Beyond the OB markers: Rethinking the Space of Civil Society in Singapore', (2005) 20(1) Sojourn 19-31.

<sup>219</sup> Adriana Kemp and Nelly Kfir, 'Mobilizing Migrant Workers' Rights in "Nonimmigration" Countries: The Politics of Resonance and Migrants' Rights Activism in Israel and Singapore', (2016) 50(1) Law & Society Review, 82-116.

<sup>220</sup> Lenore Lyons, 'Dignity Overdue: Women's Rights Activism in support of Foreign Domestic Workers in Singapore', (2007) 35(3/4) Womens Studies Quarterly, 106-122, 114.

<sup>221</sup> Lenore Lyons, 'Transient Workers Count Too? The Intersection of Citizenship and Gender in Singapore's Civil Society', (2005) 20(2) Sojourn: Journal of Social Issues in Southeast Asia, 211-12, relying on the Foreign Domestic Workers Bill: A Draft Proposal made by The Working Committee 2 (TWC2).

- F) Guidelines for the Commissioner and all other officers appointed or acting under this Bill for its regulation.

#### IV. EQUALITY IN THE TIME OF COVID-19

While the recent COVID-19 pandemic has brought most countries to their knees, few stand in a position as uniquely disadvantaged as female domestic workers. Largely unseen as they are even in times of normalcy, a discussion on their rights in the present climate is incomplete without examining the repercussions that national policies have had on domestic workers.

##### **A. AMBIGUITY FOR DOMESTIC WORKERS IN AUSTRALIA**

Given the largely poor data infrastructure in Australia, it is difficult to determine the exact extent of impact the pandemic has had on domestic workers employed across the country. Institutional problems—domestic violence, sexual and physical abuse, exploitation and overworking—persist regardless of the pandemic, but it may be wise to presume these may have surged in the current scenario. The Australian government has released general guidelines for worker rights in the pandemic, but these do not specify where domestic workers, especially those who may have migrated to Australia for employment, fall on the spectrum.<sup>222</sup> This only serves to illustrate the compelling need for clearer policies when it comes to domestic workers' rights and their broader inclusion in general economic and healthcare policy.

##### **B. THE LONG ROAD HOME FOR MIGRANT WORKERS IN INDIA**

Like most other economies, India has been on a nationwide lockdown since late March in a bid to control the spread of COVID-19. Part-time female domestic workers have been quarantined at home and are unable to continue working under their previous employments.<sup>223</sup> Social welfare organisations have rallied for employers to continue their employees' monthly wages so that domestic workers can pay for their rent, food and other essentials during the lockdown.<sup>224</sup> Further these domestic workers have been unable to make the arduous journeys home to their villages in rural India as transport services across the country have been

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<sup>222</sup> Safe Work Australia, 'Workers Rights' <<https://www.safeworkaustralia.gov.au/covid-19-information-workplaces/industry-information/general-industry-information/workers-rights?tab=tab-toc-employer>> accessed 7 July 2020.

<sup>223</sup> K.C. Deepika, 'COVID-19 has Domestic Workers Stuck Between a Rock and a Hard Place,' *The Hindu* (Bengaluru, 28 March 2020) <<https://www.thehindu.com/news/cities/bangalore/covid-19-has-domestic-workers-stuck-between-a-rock-and-a-hard-place/article31193472.ece>> accessed 7 July 2020.

<sup>224</sup> Joint Secretary, D.O. No.M-11011/08/2020-Media (Ministry of Labour and Employment, Government of India, 20 March 2020) <[https://labour.gov.in/sites/default/files/Central\\_Government\\_Update.pdf](https://labour.gov.in/sites/default/files/Central_Government_Update.pdf)> accessed 7 July 2020.

suspended.<sup>225</sup> Cooperative housing societies and residents welfare associations play a key role in either aiding or complicating domestic workers' lives in the current pandemic. Certain states have asked housing societies to collect data on the domestic workers employed by their residents in order to bring them under the ambit of a pension scheme that may allay some of the financial troubles domestic workers may face.<sup>226</sup> However the increasing uncertainty, lack of proper wages, rising levels of domestic abuse and inadequate welfare mechanisms have compromised the position of domestic workers in India.

### **C. OBSCURE PROTECTIONS FOR DOMESTIC WORKERS IN INDONESIA**

Indonesian domestic workers in the country are facing a uniquely exploitative situation during the COVID-19 crisis. As many as 4.2 million domestic workers are spread across the country, and are working under unclear contracts, long hours and without proper access to legal protections and healthcare.<sup>227</sup> A recent survey found only 42% of its respondents were contribution assistance recipients under the national health insurance scheme, while close to none had any form of tangible social security.<sup>228</sup> Large sections of Indonesian migrant domestic workers remain stuck in their various host countries, unable to return home. Indonesia launched the Pre-Employment Card (Kartu Pra-Kerja) in response to the COVID-19 crisis and prepared for the establishment of employment insurance for workers and small business owners.<sup>229</sup> It is difficult to see where domestic workers fall on this scale, as they are legally not recognized as workers under the Law on Manpower.

### **D. LABOUR EXPORT COMPROMISED IN THE PHILIPPINES**

With borders closing down to contain the spread of COVID-19, Filipina migrant domestic workers who are employed across the world are stuck in their host countries away from their

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<sup>225</sup> Mustafa Rajkotwala and Rahil Mehta, 'Lockdown Woes: The Dismal State of Domestic Workers in India', *Jurist* (6 May 2020) <<https://www.jurist.org/commentary/2020/05/rajkotwala-mehta-domestic-workers-covid-19/>> accessed 10 June 2020.

<sup>226</sup> Aswini Priolkar, 'Why Maharashtra is Asking Housing Societies to Collect Data on Domestic Workers', *Blomberg Quint* (13 April 2020) <<https://www.bloombergquint.com/law-and-policy/why-maharashtra-is-asking-housing-societies-to-collect-data-on-domestic-workers>> accessed 7 July 2020.

<sup>227</sup> Ardila Sykriah, 'What About Us: Domestic Workers Feel Neglected among Coronavirus Outbreak,' *The Jakarta Post* (Jakarta, 18 March 2020) <<https://www.thejakartapost.com/news/2020/03/18/what-about-us-domestic-workers-feel-neglected-amid-virus-outbreak.html>> accessed 7 July 2020.

<sup>228</sup> *ibid.*

<sup>229</sup> Dzulfiqar Fathur Rahman, 'Preemployment Card Draws Criticism as Workers need Cash', *The Jakarta Post* (Jakarta 5 May 2020) <<https://www.thejakartapost.com/news/2020/05/04/preemployment-card-draws-criticism-as-workers-need-cash-aid.html>> accessed 7 July 2020.

children and families.<sup>230</sup> The POEA has suspended screening new applications and contract accreditations for domestic workers, along with a list of other procedures for the time being.<sup>231</sup> Domestic workers returning or being repatriated from abroad are to be subject to a strict quarantine upon arrival.<sup>232</sup> Further, all recruitment agencies have been asked to monitor and report the status of their workers deployed overseas.<sup>233</sup> These measures are significant given the economic contribution of migrant female domestic workers to the Philippine economy.

## E. SHELTERING FDWs IN SINGAPORE

Unlike most other migrant labourers in Singapore, who inhabit shared dormitories in squalor;<sup>234</sup> FDWs' are required by law to reside in their employers homes. As a result compared to other demographics of their cohort, a relatively smaller proportion of FDWs have been tested positive.<sup>235</sup> The Ministry of Manpower has been quick to restrict the entry of foreigners during the pandemic and has asked employers to renew contracts of older FDWs, rather than bring new workers from overseas.<sup>236</sup> However FDWs both leaving and entering Singapore are required to serve a 14 day-long Stay Home Notice at a government mandated facility.<sup>237</sup> FDWs who continue in the employ of their employers are not permitted to step outside on their days off, unless to run necessary errands.<sup>238</sup>

While these measures are certainly appropriate, the institutional problems in domestic workers' regulations in Singapore are only highlighted in the face of a pandemic. FDWs continue to be

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<sup>230</sup> Rothna Begum, 'Domestic Workers in Middle East Risk Abuse among COVID-19 Crisis', *Al Jazeera* (4 April 2020) <<https://www.aljazeera.com/indepth/opinion/domestic-workers-middle-east-risk-abuse-covid-19-crisis-200404152201409.html>> accessed 7 July 2020.

<sup>231</sup> Philippine Overseas Employment Administration, 'Guidelines on POEA Transactions and OFW Arrivals and Departures during the Enhanced Community Quarantine and National State of Calamity brought about by Corona Virus Disease 2019 (COVID-19)', (Government of Philippines, 18 March 2020) <<http://www.poea.gov.ph/memorandumcirculars/2020/MC-07-2020.pdf>> accessed 7 July 2020.

<sup>232</sup> Philippine Overseas Employment Administration, 'Adoption Of The Guidelines On The Arrival And Repatriation Of Overseas Filipinos, And The Guidelines At Seaports For All Maritime Vessels Issued By The Department Of Health', (Government of Philippines, 18 March 2020) <<http://www.poea.gov.ph/memorandumcirculars/2020/MC-09-2020.pdf>> accessed 7 July 2020.

<sup>233</sup> *ibid.*

<sup>234</sup> Sallie Yea, 'This is Why Singapore's Coronavirus Cases are Growing', *The Conversation*, (29 April 2020) <<https://theconversation.com/this-is-why-singapores-coronavirus-cases-are-growing-a-look-inside-the-dismal-living-conditions-of-migrant-workers-136959>> accessed 7 July 2020.

<sup>235</sup> Wong Yang, '17 Maids in Singapore have COVID-19, None Infected by Foreign workers in Dorms', *The Straits Times* (Singapore, 23 April 2020) <<https://www.straitstimes.com/singapore/17-maids-in-singapore-have-covid-19-none-infected-by-foreign-workers-in-dorms>> accessed 7 July 2020.

<sup>236</sup> Ministry of Manpower, 'Advisory to Foreign Domestic Workers, Employers and Employment Agencies on COVID-19 Precautionary Measures', (Government of Singapore) <<https://www.mom.gov.sg/covid-19/advisory-to-fdws-and-employers>> accessed 7 July 2020.

<sup>237</sup> *ibid.*

<sup>238</sup> *ibid.*

at risk to exploitation, sexual and physical abuse and improper healthcare at the hands of their employers. Given the government's general reluctance to intervene in matters of the home, it is increasingly unlikely that FDWs will be able to access any tangible help should they need it.

## V. CONCLUDING REMARKS

Despite the existence of international protocol and human rights discourse on the rights of domestic workers, the gendered notion of domestic labour continues to taint the policies and practices of several countries in the Asia Pacific. As considered in Part II of the paper, the apparent feminisation of domestic labour is particularly dichotomous: on one hand, immense effort and literature has gone into defending domestic work as legitimate economic work,<sup>239</sup> but on the other, equal effort has gone into reclaiming public spaces and expanding female workers' rights beyond their own homes.<sup>240</sup> Paid domestic work is hard to reconcile with either strain of effort—by not recognizing domestic work as legitimate work worthy of proper regulation, proper wages and proper rights, there is an inherent risk of reinforcing the gendered idea of unseen women continuing to care for the house and child. Conversely, by profiting off the back of the female domestic worker, without according to her the rights and protections that are her due, the public-private divide continues to be shored up.

The lynchpin in either perspective is the defining lack of rights and protections for female domestic workers in the Asia Pacific. On one extreme is labour-importing Australia where the stark absence of any significant legislations contrast heavily with the regulation-heavy, rights-deficit approach of labour-importing Singapore on the other end of the scale. Neither country does much for its migrant domestic worker force as indifference and over-regulation both contribute to systemic abuses against these workers. Countries like Indonesia and Philippines adjust their labour export policies according to the destination countries where their workers travel, often policing the domestic workers themselves through religion, society and gender-based narratives. This leaves domestic workers to fend for themselves without any institutional support. In India, massive overpopulation leaves little scope for the regulation and systemic

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<sup>239</sup> 'Feminist Perspectives on Class and Work', (*Stanford Encyclopaedia of Philosophy*, 1 October 2004) <<https://plato.stanford.edu/entries/feminism-class/>> accessed 7 July 2020.

<sup>240</sup> Ulla Wischermann and Ilze Klavina Mueller, 'Feminist Theories on the Separation of the Private and the Public: Looking Back, Looking Forward', (2004) 20 *Women In German Yearbook: Feminist Studies In German Literature & Culture* 184-197.

protection of domestic workers. This is a troubling prospect for a country that relies so heavily on its domestic worker force.

It is crucial for countries committed to protecting the rights of domestic workers to ratify the Domestic Workers Convention No. 189 of 2011, which became binding international law in 2013.<sup>241</sup> At the time, only 10% of domestic workers had some form of legislative protection, while nearly 25% were excluded entirely from their respective national labour legislations.<sup>242</sup> The ASEAN Intergovernmental Commission on Human Rights has also not addressed the systemic disparities against domestic workers in the region. Perhaps, a more proactive contribution on its part may quench the pervasive lack of a regional human rights court while ensuring the implementation of the Domestic Workers Convention No. 189 of 2011. This could prod national reform in individual countries of the Asia Pacific. Regional checks of such a nature are not unheard of: the European Union adopted the Resolution of 28 April 2016 on Women Domestic Workers and Carers in the EU to recognise and regulate domestic work as professional work.<sup>243</sup> Although, due regard must be had to the unique form of labour diplomacy that exists in the Asia Pacific, formalizing domestic work as part of the economy would result in better policies and protections for domestic workers.

The protection of domestic workers is an imminent and pressing systemic dilemma that requires careful resolving. Despite its unique economic positioning, each country as discussed in this paper requires either the labour or the earnings of female domestic workers. Given that their international migration is part of a larger economic structure, withholding the rights of female domestic workers amounts to ignoring their sizeable contributions to the global economy and erasing their lived experiences.

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<sup>241</sup> International Labour Office, 'Landmark Treaty for Domestic Workers Comes Into Force' (ILO, 5 September 2013) <[https://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS\\_220793/lang--en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_220793/lang--en/index.htm)> accessed 7 July 2020.

<sup>242</sup> International Labour Office, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, (International Labour Organisation, 2013).

<sup>243</sup> European Parliament, 'Resolution of 28 April 2016 on Women Domestic Workers and Carers in the EU, (European Union, 2016) <[https://www.europarl.europa.eu/doceo/document/TA-8-2016-0203\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0203_EN.html)> accessed 7 July 2020.