Inadequate legal protection for domestic workers: a key factor contributing to the underdeveloped domestic service industry in China

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Abstract: The domestic service industry in China is important to the development of Chinese society. It has the potential to promote the development of the economy, optimise the country's industrial structure, and relieve unemployment pressure in China. However, significant problems, including the lack of effective regulation of domestic service companies by public authorities, the prevalence of bias against domestic workers, the lack of trust between domestic workers and homeowners, and the shortage of highly skilled workers, have hindered the development of the domestic service industry. This article argues that a critical reason for the prevalence of these problems is the non-existent or insufficient legal protection for domestic workers in the labour market. Therefore, empowering these workers with legal protection is likely not only to contribute to the improvement of their standard of living but also to facilitate the function of the domestic service industry in the development of Chinese society generally.

Keywords: domestic workers, domestic service industry, legal protection

1. Introduction

According to the Chinese Department of Trade in Services and Commercial Services' Report on Domestic Service Industry in China, there were 25.42 million domestic workers in China in 2017^[1].In the context of the increasing demand for domestic services, especially that of high-quality domestic services, the domestic service market is growing fast^[2]. Domestic work therefore not only participates to the quality of life of homeowners and domestic workers, but it also contributes to the development of Chinese society as a whole. A healthy domestic service industry in China can promote economic growth, optimise the industrial structure, and create employment opportunities in China.

Domestic workers are still excluded from the Chinese Labour Law (CLL) and there is no specific legislation on the protection of these workers.^[3] Inadequate legal protection for domestic workers thus has not only resulted in the disadvantaged status of these workers, but also, as discussed in this article, is a fundamental causal factor underlying the problems in the domestic service industry in that country. This article discusses that significant problems, including the lack of effective regulation of domestic service companies by public authorities, the prevalence of bias against domestic workers, the lack of trust between domestic workers and homeowners, and the shortage of highly skilled workers, have hindered the development of the domestic service industry. In addition, it argues that inadequate legal protection for domestic workers contributes to these existing problems.

2. Lack of effective regulation of domestic service companies by public authorities

Insufficient legal protection for domestic workers contributes to the public authorities' ineffective regulation for domestic service companies. Insufficient legal protection for domestic workers results in an economic incentive for owners of domestic service companies to run their business as intermediary domestic service companies, which are not properly regulated by public authorities. The lack of public authorities' effective regulation for domestic service companies has contributed to the current chaotic situation of the domestic service industry in China^[4]. This chaotic situation not only results in homeowners' distrust of domestic service companies and domestic workers but also discourages workers from entering the industry^[5]. Consequently, the chaotic situation of the domestic service industry hinders the increase of the scale of the industry.

In the relationship between domestic service companies and domestic workers, there are primarily two modes of operation: the intermediary mode and the employment mode^[6]. Intermediary companies do not establish labour relationships with domestic workers. They are brokers between domestic workers and homeowners. They generate earnings from introducing domestic workers to homeowners and charging brokerage fees from homeowners or domestic workers. The legal status of intermediary domestic service companies as being brokers means they are responsible neither for actions of domestic workers nor for the service quality provided by them. This mode thus requires low investment and has low legal responsibility. In contrast, domestic service companies which are operated in the employment mode establish labour relationships with domestic workers. They not only bear responsibility for the action of their domestic workers but also ensure that homeowners can receive the standard of service stipulated in the service contract. Operating domestic service companies in this mode thus requires higher investment and demands a higher legal responsibility in comparison to operating intermediary domestic service companies.^[8]

There is not a clear division of the legal power of public authorities regarding responsibility for regulating intermediary domestic service companies and there is very little regulation about these companies from the public authorities^[9]. The regulation for domestic service companies usually involves different offices of the public authorities, such as the bureau of industry and commerce, bureau of human resources and social security and bureau of civil affairs^[10]. The involvement of different public authorities results in the overlap of administrative power^[11]. Such overlap not only leads to a waste of administrative resources but also contributes to the avoidance of responsibilities among public authorities when there are problems needing to be addressed, effectively creating a regulatory void^[12].

Moreover, the lack of adequate legal grounds for public authorities to regulate the activities of intermediary domestic service companies results in a chaotic situation of the domestic service industry. When public authorities find that domestic service companies have done things which are harmful to the interests of homeowners and the domestic workers, they may be unable to correct and sanction these domestic service companies. For example, there is no mandatory national standard on the evaluation of the occupational level of domestic workers^[13]. Therefore, domestic service companies can use their own standard to evaluate and rank domestic workers as they want. In order to attract homeowners, domestic service companies may claim that their domestic workers are "golden level" or "five-star" workers when, in fact, these workers are poorly skilled^[14]. While these descriptors can mislead homeowners into believing that these domestic workers are highly skilled, public authorities cannot ban and punish this type of advertisement because there is no mandatory national standard classifying the occupational skill level of domestic workers.

This chaotic situation in the domestic service industry has resulted in difficulties for homeowners to recruit reliable and skilled domestic workers^[15]. They may end up paying unskilled domestic workers a high wage or even hiring dangerous domestic workers who may endanger their property or personal safety^[16]. It is common for domestic service companies to use misleading and false occupational certificates or to fabricate a long work history for their domestic workers to attract homeowners^[17]. Ordinary homeowners, who do not have a deep understanding of the actual operation of domestic service companies, can be easily misled by domestic service companies' s false information^[18].

Moreover, the existence of unregistered domestic service companies increases the safety risk of homeowners. Starting an intermediary domestic service company has low overheads^[19]. People can start their intermediary services with only a mobile phone^[20]. Therefore, the majority of domestic service companies are operated in small rented shopfront close to residential areas with one or few receptionists. The inadequate or nonexistent regulation of domestic service companies means that there are many unlicensed companies^[21]. The unlicensed status of these companies means that, even when their illegal behaviours are caught and punished by public authorities, they often just shut down their current shop and/or relocate to another place to avoid legal responsibilities. Consequently, these companies tend to seek short-term interests^[22]. They thus do not value the quality of their services, and they even do not hesitate to undertake illegal activities to obtain a profit^[23].

3. Lack of trust between domestic workers and homeowners

Insufficient legal protection for domestic workers contributes to a lack of trust in the domestic service industry. Guaranteeing the safety and reliability of domestic work is of the highest importance because the work relates to the safety and privacy of households and often involves caring for those who are

vulnerable and dependent. However, homeowners usually doubt the reliability of domestic workers and the service quality provided by them^[24].

The reliability of domestic workers is often challenged on the basis of immoral or illegal behaviour towards family members in the household, especially vulnerable ones who are unable to protect themselves, such as children or the elderly^[25]. There are frequent media reports in China about the criminal activities of domestic workers, such as theft or even killing the people who are in their care^[26]. These reports are severely detrimental to the reputation of domestic workers as a whole.

The poor service quality provided by domestic workers can result in an unsatisfactory experience of homeowners. Property loss, personal injuries or health problems are further worries for many households because many domestic workers lack the necessary knowledge to use modern home appliances^[27]. There also are concerns about poor hygiene habits^[28]. Consequently, the quality of domestic service is not trusted by households^[29].

A key factor that contributes to the lack of trust in domestic services is the insufficient legal protection for domestic workers. Insufficient legal protection for domestic workers means such workers can hardly obtain necessary occupational training, such as safety training courses. Intermediary domestic service companies do not have the legal obligation to provide pre-employment training from domestic workers. Domestic workers thus usually cannot obtain necessary occupational training from domestic service companies. Moreover, even local governments provide subsidised or free occupational training regarding domestic services, domestic workers may be unable to attend this training due to their unpredictable working hours and lack of regular daily rest breaks. Domestic workers may even do not have time to improve their skills and knowledge through self-learning because of their lack of regular breaks. Consequently, more than half of domestic workers in China have not received any occupational training before^[30]. It is difficult to guarantee the service quality of domestic service because of their inadequate occupational training^[31].

Moreover, the insufficient legal protection for domestic workers contributes to a lack of background checks of domestic workers, which gives domestic workers opportunities to undertake immoral or even illegal acts without being caught easily^[32]. While personal information of employees needs to be submitted to and verified by the labour authorities, the lack of labour protections for domestic workers means their personal information does not need to be verified by any public authorities. However, there is no vetting of the personal information of domestic workers because neither householders nor intermediary domestic work companies are able to recognise fake identity documents, as they do not have access to public security systems^[33]. Consequently, some domestic workers take advantage of the complicated process involved in validating identities and they use false identities to enable them to escape responsibilities or even to commit illegal acts in households^[34]. The use of fake identifies moreover makes it difficult for the police and judicial authorities to find the worker and restore household losses^[35]. The use of false identity among domestic workers thus contributes to homeowners' low trust in domestic workers. This distrust is detrimental to homeowners' willingness to hire domestic workers or their willingness to pay a high wage for domestic services. This thus hinders the improvement of the economic scale of the domestic service industry and the development of high-end domestic services.

4. Prevalence of bias against domestic workers

Inadequate legal protection for domestic workers contributes to people's bias against domestic workers. The prevalence of bias against domestic workers is detrimental to the development of the domestic service industry. It not only stops workers from entering the industry but also contributes to the loss of skilled workers^[36]. In turn, the lack of experienced and highly skilled domestic workers in the domestic service industry constrains the development of high-end domestic services^[37].

Domestic work is still deemed as menial work, associated with the traditional household servants of the past, when they were forced to work for other households because of poverty or humble social status^[38]. They were not respected by society, and their work was not considered to be a formal job^[39]. Such a concept still affects domestic workers of the present, whose work is similar to that of servants in the past^[40]. Moreover, domestic work is usually considered a low-end job that requires no occupational skill. It is regarded as a job for those who cannot find other jobs. This bias against domestic work creates a public perception that domestic work is shameful and not a real job^[41].

The lack of access to legal protection consolidates people's idea that domestic work is not a formal job^[42]. Although domestic work is recognised as a formal occupation in the Classifications of Jobs of the

People's Republic of China, the perception that domestic work is an informal job is hard to change if domestic workers do not have access to adequate legal protection. In addition, the inadequate legal protection of domestic workers is a critical factor that results in their poor standard of living^[43]. People may undervalue domestic work and despise domestic workers due to their low standard of living^[44].

5. Shortage of highly skilled workers

Inadequate legal protection for domestic workers contributes to the inadequate numbers of highly skilled domestic workers in the domestic service industry. Although the wages of domestic workers, especially for highly skilled domestic workers, have increased steadily in recent years, domestic work is still not considered to be a desirable job due to its lack of labour protection and job security^[45]. Even if highly skilled domestic workers usually have a higher income, this cannot compensate for their loss of legal rights, which are connected to their employment status. Consequently, the domestic service industry is unable to attract and keep highly-skilled domestic workers. This situation constrains the development of high-quality domestic services, which in turn intensifies the public perception that domestic service is a shameful job^[46].

The lack of labour protections for domestic workers means that migrant domestic workers are unable to obtain certain rights, such as changing the location of their household registration, which is connected to a worker's employment status. In China, employment status is not only connected with access to labour protections, but also the enjoyment of public services, such as buying social insurance and eligibility to change the place of household registration. Without full access to these social services, migrant domestic workers and their family members are unable to receive social services, such as public education and public housing^[47]. Consequently, it is difficult for migrant domestic workers to bring their family members, especially their children, to live with them in the place where they work, if they do not have employment status^[48]. Even for highly skilled migrant domestic workers who have enough financial ability to afford a reasonable standard of living for their family members, the fact that they cannot access public services is likely to limit their ability to bring their family to the place where they work^[49]. If migrant domestic workers want to have full access to public services, they need to find a job that gives them employee identity. Consequently, highly skilled workers usually do not even consider working as domestic workers^[50].

Even though the wages of highly skilled domestic workers have increased substantially in recent years, the lack of employment-based legal rights and low job security mean that working in the domestic services continues to remain a poorly remunerated job compared to people who have employment status. For example, confinement nannies^[51] are commonly considered to have high incomes in China. The wage of a skilled confinement carer could be more than 10,000 yuan per month in Shanghai in 2018, which is significantly higher than Shanghai's average wage, which was 7,132 yuan, in 2017. However, domestic confinement carers are responsible for their own social insurance and do not have other employment benefits such as holiday pay. Therefore, the actual wage for such skilled workers is not high because they must cover the cost of their retirement pension insurance and medical expenses as well as save money for periods in between jobs. Moreover, the temporary nature and absence of job security affect their incomes negatively. One working term for short-term domestic workers, such as confinement nannies, usually lasts for less than one month. It means that, while these domestic workers could have a high monthly wage, their loss of income during the intervals between positions could contribute to a low gross income.

The shortage of highly skilled domestic workers is detrimental to the development of high-end domestic services in China. There are two classes of domestic services according to their quality and type, namely, basic and high-end domestic services. Basic domestic services include regular or conventional cleaning, cooking and child minding, which usually do not require additional occupational training. High-end domestic services, such as cooking a nutritious meal and providing infant and maternal care, involve more occupational skills than conventional domestic services dol^[52]. While high-end domestic services require comprehensive training in management, scientific theories or even knowledge of foreign languages, basic domestic services require comparatively little training^[53].

Despite the increasing demands for high-quality domestic services and a wide variety of domestic services from Chinese homeowners, domestic workers in China have not met such demand due to poor occupational skill of domestic workers. To meet the increasing demand for high-quality domestic services, some Chinese domestic service companies have started recruiting highly skilled domestic workers from other countries, usually from the Philippines, since the 2000s^[54]. However, overseas

domestic workers are not likely to fill sufficiently the demand for highly skilled domestic workers in China because China does not allow its residents to hire foreign domestic workers. Domestic service companies usually use alternative ways for foreign domestic workers to enter China. In particular, they use short-term visas such as business, tourist or visitor visa. Such methods involve high risks for foreign domestic workers, domestic service companies and homeowners because they represent a breach of immigration law. Moreover, the cultural differences, such as lifestyle, food preference, and language, determine that foreign domestic workers could not replace local domestic workers if even China allowed its citizens to hire foreign domestic workers.

6. Conclusion

The Chinese domestic service industry is experiencing problems, which in particular include the lack of effective regulation on domestic service companies, social bias against domestic workers, lack of trust in services provided by domestic workers, and shortage of highly skilled domestic workers. These problems are detrimental to the development of the domestic service industry.

A key factor that contributes to these problems is inadequate legal protection for domestic workers. In particular, insufficient legal protection for domestic workers creates an economic incentive for owners of domestic service companies to run their businesses as intermediaries. However, there is very little regulation from the public authorities over intermediary domestic service companies, and the latter can evade the regulations of the public authorities easily.

Moreover, the lack of legal protection contributes to the lack of occupational training for domestic workers. Inadequate training contributes to the poor occupational skill of domestic workers. The lack of legal protection also means that the personal information of domestic workers does not need to be verified by public authorities, which fosters a fertile environment for illegal or immoral acts. The overall poor occupational skill of domestic workers coupled with the immoral or illegal conduct of some domestic workers contribute to an overall lack of trust in the domestic service industry.

Furthermore, the poor legal protection of domestic workers reinforces the idea that domestic work is not formal work and that the domestic service industry thus cannot attract and maintain highly skilled domestic workers. Therefore, adequate legal protection for domestic workers could benefit the development of the domestic service industry.

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