

UNPAID CARE WORK AND INDIAN STATE POLICY

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ABSTRACT

“Unpaid care work” or the work that is performed within the confines of the household, is mostly undertaken by women and largely left out of the purview of any discussion on what amounts to “work” in an economy. Since, such work occupies a large portion of the day for most women, it is not justified that first, such work is not even considered as performing any work, second, that the burden of such work falls solely on the shoulders of women and third, that the state washes its hand from the wide gamut of tasks that are performed under this umbrella of care labour. This is what has been called as the need to evolve policies based on the three Rs paradigm: Recognition, Redistribution and Reduction respectively. In this paper, the author examines how Indian state policies have fared against this framework with regard to its formulation of unpaid care labour. The paper concludes by noting that although there are some policies which meet the criteria here and there, Indian policies as a whole fall short in properly accounting for unpaid care labour in its policy framework.

I. INTRODUCTION

With the unfolding of industrialization and the absorption of men into the capitalist avenues of paid labour, the work done by women in the confines of the household became increasingly invisible and devalued.¹ To be

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¹ Dorothy E. Roberts, *Spiritual and Menial House Work* 9 Yale J.L. & Feminism 51 (1997).

considered as a part of the labour force and to be acknowledged as doing “work”, wages were required to be earned for the same. However, the work performed by the women in the household increasingly gained association with natural characteristics of “womanhood” and care became synonymous with it, so much so that work done within the household was seen as fulfilling the natural altruistic tendencies of women and a situation of bringing it into the public sphere of “work” was therefore, not fathomable. Compensation was envisaged in terms of emotional reward rather than monetary wages. This strain of thinking continues to get validated through treatment of care work as socially necessary and distinct from the realm of labour law², as is reflected in the legislations of many countries.

In most countries even today the vast majority of unpaid care work is undertaken by women. For long, feminists have fought against such invisibilising of women’s reproductive labour and the patriarchal agenda behind associating housework with women so as to keep their work unwaged. They have extensively shown that women’s work not only sustains the household and enables market participation by other members, but, also increasingly brings down the expenditure which would otherwise have to be incurred if such services were opened up in the market place.³ Care work,

² Judy Fudge, *Commodifying Care Work: Globalization, Gender And Labour Law*, LABOUR LAW RESEARCH NETWORK (2013), http://www.upf.edu/gredtiss/_pdf/2013-LLRNConf_Fudge.pdf, arguing for an expansion of the domain of labour law to include unpaid work in the household.

³ For example, one scholar notes in the Indian context that the value of unpaid care is estimated as between Rs. 47865- 110028 billions, while person care is estimated as between Rs. 10470-24069 billions, depending on the wage rates used in the valuation. Source? Rajni Palriwala and N. Neetha, *The Care Diamond: State Social Policy and the Market*, UNITED NATIONS RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT, (February 2009),

whether paid or unpaid, involves a lot of investment in the capabilities of the recipient and imparts skills, values, and habits to the recipients which not only benefits him/her in terms of earning in the labour market, but, also performing better in all his roles in life be it as a spouse, a parent or a friend.⁴ By enhancing the physical, emotional and intellectual capabilities of the recipients, caregivers not only benefit them but also others through them. Feminist scholars have also identified multiple policy options for bringing unpaid care work to the forefront and ensuring that such activities are recognized as “work”. The suggested policies are not only aimed at recognition, but, are also aimed at deconstructing the ties which patriarchal society has created between unpaid care work and “womanhood” and have sought to ensure that care work is not thrust upon women and such work is redistributed between members of both genders.⁵ The role of the state in ensuring that the reproductive burden is reduced has also been examined.⁶

The conceptual context in which care work is placed is important to understand the various dimensions of care work in differing social policies. Social policies either directly or indirectly must not only ensure that they do not invisibilize the work done by women, but should also be cautious in ensuring that policies do not further accentuate the notion of unpaid care

[http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/4177D0C917369239C1257566002EA0C7/\\$file/IndiaRR3.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/4177D0C917369239C1257566002EA0C7/$file/IndiaRR3.pdf)

⁴ Paula England, *Emerging Theories of Care Work*, 31 ANNU. REV. SOCIOL. 381, 385 (2005).

⁵ Shahra Razavi, *The Political and Social Economy of Care in a Development Context*, UNITED NATIONS RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT (June 2007), [http://www.unrisd.org/unrisd/website/document.nsf/ab82a6805797760f80256b4f005da1ab/2dbe6a93350a7783c12573240036d5a0/\\$FILE/Razavi-paper.pdf](http://www.unrisd.org/unrisd/website/document.nsf/ab82a6805797760f80256b4f005da1ab/2dbe6a93350a7783c12573240036d5a0/$FILE/Razavi-paper.pdf)

⁶ *Id.*

work as natural work of women only. In this context, in the second section I examine the feminist literature on care work, and the frameworks within which they have largely been written about. In the third section I shall analyze the broad contours which have been advocated for setting up or evaluating policies for housework. In the last section I shall review specific policies, plans and laws that can be expected to place within its ambit the issue of ‘unpaid care work’ as a part of reducing gender disparities. It is important to note that even without categorically referring to unpaid care work, a number of legislations aimed at social welfare, through its stated aim of what the state will do or not do and the conditions on which benefit will be conferred, implicitly carry significant consequences and may unintentionally perpetuate certain social ordering of familial and gendered relationships, and therefore will be considered for review as well. I will conclude with observations as to how the Indian policies match up against some suggested frameworks for incorporating unpaid care labour in the national policies.

II. **DEFINING UNPAID CARE WORK**

UN Women’s Progress of the World’s Women 2000, UNIFEM’s biennial report defines “unpaid care work” as follows:

“The term ‘unpaid’ differentiates this care from paid care provided by employees of the public and NGO (non government organizations) sector and employees and self-employed persons in the private sector.

The word ‘care’ indicates that the services provided nurture to other people.

The word ‘work’ indicates that these activities are costly in time and energy and are undertaken as obligations (contractual or social).’’⁷

Unpaid care work therefore involves cooking, cleaning, caring for elderly, the children and the sick, collecting fuel and water amongst other domestic chores. It also includes voluntary community work.⁸ However, for the purpose of this paper reference to “unpaid care work” or “house work” or “women’s work” is only in the sense of the former and voluntary community work is not included.

III. LITERATURE REVIEW

The conceptualization of the worker has traditionally been of a white male employed in active production of goods and services that are sold in the market for a price.⁹ A worker would have a capitalist boss and be a part of a union.¹⁰ This conceptualization of the worker had the intended or unintended consequence of keeping the housewife away from its purview. In the initial domestic work debates, second wave feminists challenged the manner in which housework is taken for granted, made invisible and

⁷ Progress of the World’s Women, 2000 UNIFEM Biennial Report , http://www.unwomen.org/~media/headquarters/media/publications/unifem/153_chap1.pdf

⁸ Lopita Huq, *Review of Literature on Unpaid Care Work Bangladesh*, BRAC DEVELOPMENT INSTITUTE (December, 2013), <http://interactions.eldis.org/sites/interactions.eldis.org/files/BDI-Research-Report-4-Unpaid-Care-Work-Literature-Review-Bangladesh.pdf>.

⁹ Eva Kaluzynska, *Wiping the Floor with Theory: A Survey of Writings on Housework*, 6 FEM REV 27, 28 (1980).

¹⁰ *Id.*

neglected, but, also the assumptions of women's natural and immutable ability and desire to engage in such work.¹¹ Yet other feminist writers such as Mariarosa Dalla Costa and Selma James conceived of housework as essential for the sustenance of capitalism, whereby the home was equated to a 'social factory' wherein the product of the women's labour was to keep the "workers" in good working condition and yet not be paid for it.¹² For James and Costa, housework was the basis of women's oppression and their lack of power in the society. Other feminist writers like Simon De Beauvoir have assailed housework as being a torture like no other and with 'little affirmation of individuality'.¹³

The writings around unpaid care work can be broadly arranged into four theoretical paradigms: the devaluation theory; the commodification of care theory; and lastly, the love and money paradigm.¹⁴ In the following paragraphs an exposition of the various paradigms has been undertaken.

1) DEVALUATION FRAMEWORK

Devaluation framework states that unwaged nature of care work is largely owing to its close association with women. Cultural institutions have always attributed lower status to women, and by association such devaluation is carried on to the work done by women. This devaluation can be attributed

¹¹ *Id.* at 32.

¹² *Id.*

¹³ Fiona Tolan, *Cleaning Gives Me Pleasure: Housework and Feminism in Carol Shields's Unless*, AUSTRALASIAN CANADIAN STUDIES, https://www.academia.edu/700322/_Cleaning_Gives_Me_Pleasure_Housework_and_Feminism_in_Carol_Shieldss_Unless_

¹⁴ England, *supra* note 4.

to two primary reasons: a) the public private dichotomy and the private as the sole responsibility of women; and b) care as a “natural” attribute of women

a) THE PUBLIC AND PRIVATE DICHOTOMY

The social constructed bifurcation between the public and the private was a capitalist move to ensure that domestic labour is differentiated from other forms of labour and cordoned off as strictly the business of the private domain and therefore not needing state intervention.¹⁵

Public policy has generally fostered the public private divide by choosing to not interfere in the realm of the so called private and for a very long time public policy refrained from discussing care and those who provide care. Even the very limited policies on care are based on the male as the breadwinner model, which assumes that men have the primary responsibility of earning while women have the primary responsibility of caring.¹⁶

b) HOUSEWORK AND CARE AS A “NATURAL” ATTRIBUTE OF WOMEN

Betty Freidan writing in 1963, notes that for many years women were told that “they could desire no greater destiny than to glory in their femininity.”¹⁷ They were taught from early girlhood that their role was to seek

¹⁵ Eric Post, *The Gendered Division Of Labor, The Wages For Housework Movement, And The Law, GENDER AND THE LAW*, https://www.academia.edu/827795/ THE_GENDERED_DIVISION_OF_LABOR_THE_WAGES_FOR_HOUSEWORK_MOVEMENT_AND_THE_LAW

¹⁶ Neetha N, *The Social Organization Of Care Work In India: Challenges And Alternative Strategies*, 53 DEVELOPMENT, 362-367 (2010).

¹⁷ BETTY FRIEDAN, THE FEMINIST MYSTIQUE 15 (1963).

fulfillment as wives and mothers.¹⁸ Even now it is assumed that a women's primary role is that of a caregiver. The unpaid care work that is performed by her is then natural because first, nobody had to go out of their way to learn such skills as the skills are passed on from generation to generation owing to our rigid structures of sexual division of labour; and second, because the very essence of being a mother, daughter, wife, sister etc. is hinged on the performance of such duties.¹⁹ Feminist literature has for long exposed the fallacy of these socialization patterns wherein men and women are socialized to perform certain gender roles and then these gender roles become their natural identities, thereby leading to a vicious circle of artificial separation of the roles of a man and a woman.

2) COMMODIFICATION OF CARE

Unlike the other paradigms, the commodification of care argument is not concerned with explaining the low wages of care work but rather with providing a different viewing lens to care work. The commodification of intimate parts of oneself has been at the center of debate of many issues including pornography²⁰, sex work, surrogacy²¹ etc. owing to the alienation that arises from it. However, such claims can be resisted on the grounds that autonomy of women in opting to be paid should be respected²² and secondly

¹⁸ *Id.*

¹⁹ Huq, *supra* note 8.

²⁰ See Andrea D workin, *Against the Male Flood: Censorship, Pornography, and Equality*, 8 HARV. WOMEN'S L.J. 1 (1985) and Catherine A. MacKinnon, *Sexuality, Pornography, and Method: Pleasure under Patriarchy*, 99 ETHICS 314 (1989).

²¹ See Elizabeth S. Anderson, *Is Women's Labor a Commodity?*, 19 PHILOS. PUBLIC AFF. 71 (1990)

²² See Lori B. Andrews, *Surrogate Motherhood: The Challenge for Feminists*, 16 L. MED. & HEALTH CARE 72 (1988) and Katherine B. Lieber, *Selling the Womb- Can the Feminist Critique of Surrogacy Be*

because there is no evidence that the alienation is any different from any other form of alienation in the market. Moreover, a proposal that care cannot be commoditized also idealizes care work and fails to fathom the sometimes forced nature of altruism in care work or the pressure to keep care work unwaged or the economic insecurity that unpaid care workers are constantly faced with.²³

3) LOVE AND MONEY

This line of argument questions the ‘oppositional dichotomy between the realms of love and self-interested economic action.’²⁴ The argument has largely been developed by Julie Nelson and Viviana Zelizer, whereby they posit that because we are culturally acclimatized to view gender in binaries, we are culturally ingrained to see care and private sphere as associated with women whereas the rational and economic world with men. This then causes the worry that introduction of money in care work will necessarily diminish the caring component or the love.²⁵ Nelson and Zelizer have in fact pointed that such dichotomies are construed on assumptions rather than on actual empirical evidence.²⁶

Answered, 68 IND. L.J., 205 (1992) arguing for recognizing the right to consent of women wishing to act as surrogate mothers.

²³ Razavi, *supra* note 5.

²⁴ England, *supra* note 4, at 392.

²⁵ *Id.* at 392-394.

²⁶ In fact their theory is backed by other research which finds that when pay is combined with trust and appreciation, the less it drives out genuine intrinsic motivation and in fact unexpected rewards increase intrinsic motivation, thereby demonstrating specific instances of how love and care can be combined rather than assuming a dichotomy between the two.
Id. at 395.

The above writings provide a conceptual setting of how care work is conceived which is of primary importance in understanding what, why, where and how policy intervention must take place.

IV. SETTING A POLICY FRAMEWORK

Indian writing on women and labour laws has largely been restricted to the laws that have come up in the formal sector to enhance greater mobility. In a country, where of the 148 million women workers, 142 million or almost 96% are unorganised workers²⁷, equality in the formal labour sector, while ignoring care work, has serious repercussions and must be remedied by policy intervention.²⁸ However differing proposals must ensure economic stability of women engaged in care work while at the same time ensuring that women are 'liberated' from compulsory care work and can achieve economic and political autonomy. In the following section, broad contours of any policy framework shall be discussed.

Policy considerations for unpaid care labour has moved away from demanding wages as the only assuaging solution to evolving multiple solutions that address the problem of unpaid care labour.²⁹ The foundation

²⁷ Padmini Swaminathan, *Outside the Realm of Protective Labour Legislation: Saga of Unpaid Labour in India*, 44 ECON POLIT WKLY 81 (2009).

²⁸ For a general discussion on public policies related to care see Deepta Chopra, Alexandra Wanjiku & Padmini Iyer, *A Feminist Political Economy Analysis Of Public Policies Related To Care: A Thematic Review*, Evidence Report No.9 : Empowerment of Women and Girls (July 2013), <http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/2795/bitstream?sequence=1>

²⁹ Razavi adds her own questions which must be asked when evaluating a policy; *"first, who cares? Whether the care is left to the community or the family? If it is the family then whether the burden is on the women in the household or its shared? ; second, who pays? Is it the family, the state or the employer?;*

of any policy on unpaid care work must rest on the three Rs: Recognition, Reduction and Redistribution.³⁰ Recognition entails acknowledging the unpaid care work done by women as “work” and as “productive” and as much an “economic activity” as any other. This recognition may reflect in policies not only through providing greater compensation for such work (paid care work is valued less owing to the conceptualization of domestic care work as non-work), but also through its recognition while computing other benefits such as pension payments and through its reflection as an economic activity in national statistics.³¹ Reduction of unpaid care work would mean that the responsibility of reproductive labour is shifted from the private responsibility of an individual women and the government partakes in it by providing community services.³² This could be in the form of crèches run by the government or in the Indian context provision of clean drinking water and other resources so that time spent on availing these resources can be reduced. Redistribution means that the components of unpaid care work is shared among different people.³³ One common way of doing it could be ensuring that both maternity and paternity leaves are provided by employers so that the task of child rearing is shared by both parents and does not fall on the shoulders of the woman alone. Other ways of breaking down the sexual division of labour could be provision of jobs by the state so that women

third, where is the care provided? Is it in the market place, the family or is it non familial care through public service?”

Razavi, *supra* note 5 at 20

³⁰ *Making Care Visible: Women's unpaid care work in Nepal, Nigeria, Uganda and Kenya*, ACTIONAID (February 2013), http://www.actionaid.org/sites/files/actionaid/making_care_visible.pdf

³¹ *Id.*

³² *Id.*

³³ *Id.* For example in Sweden, parents pay only 13 per cent of costs of extra familial childcare, with the rest coming from the central government and municipalities.

have a chance at trying their hand at something new as well as putting women in position to organize themselves as a collective to put greater stress on division of labour.³⁴ Based on the experiences of many countries many proposals have been suggested for incorporating these three Rs such as: provision of care allowance and citizens wages³⁵, pension systems designed in a way to recognize unpaid work as contribution, provision of social security to unpaid care givers and exemption from social security contributions for people employed as carers, provision and designing of health and educational services as well as provision of community based services.³⁶

Ultimately the goal is to ensure that care work is a matter of choice and aptitude rather than a compulsion arising from socialization processes.

V. INDIA'S POLICY FRAMEWORK

In this section based on the policy framework highlighted in the previous section and the concerns put forth by feminist writers, an attempt shall be made to evaluate to what extent the concept of care has been incorporated in Indian policy framework. In particular, the Indian policies will be evaluated on their degree of achievement as against the three Rs framework of recognition, reduction and redistribution.

³⁴ *Id.*

³⁵ This is a more gender neutral form of paying for care work. One of the outstanding examples of this is the Child Support grant provided in South Africa which has adopted a “follow the child” approach wherein the grant is given to the primary caregiver. This policy is hailed for its gender neutrality and breaking down of social division of labour.

Id.

³⁶ Razavi notes that this not only ensures that care work is valued but provides relatively well protected jobs to women while at the same time freeing up their time to pursue other vocations if they may so desire. It is therefore seen in much favourable light than cash benefits since cash benefits often over very limited benefits and neither do they provide for any social rights. Razavi, *supra* note 5, at 23-24.

1) THE FIVE YEAR PLANS

A) Twelfth Five Year Plan

In the Twelfth Five Year Plan, while there is a recognition of activities performed by women which was hitherto excluded from economic estimates, the activities which are sought to be included are still in the nature of those activities which produce goods having a sale value in the market.³⁷ The services performed by women as a part of household chores, continues to evade recognition.

The Twelfth Five Year Plan does provide for initiatives to create avenues for employment through microfinance which is to be made easily accessible to Woman Self Help Groups and therefore addresses the issue of creating employment opportunities for women outside of their homes.³⁸

All the provisions seem to be directed at helping women do their housework better, so in that sense there is an effort to remove the drudgery of house work (we can see the operation of the reduction paradigm). However, there is no mention of redistribution or the need to reconceptualize housework as work required to be undertaken by all members of the family and not just the women, and therefore the redistribution paradigm is largely missing. There appears to be an implicit acknowledgment that all these measures are directed at helping women,

³⁷ XII Five Year Plan, REPORT OF THE WORKING GROUP ON WOMEN'S AGENCY AND EMPOWERMENT, Ministry of Women and Child Development, Government of India, *available at* http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wcd/wgrep_women.pdf.

³⁸ *Id.* at 12.

reducing the burden of *their* work rather than *overall housework* to be undertaken by all members of the family.

The Twelfth Five Year Plan by taking cognizance of the fact that policies and programs have a differential impact on women and men, also provides for gender budgeting³⁹ and gender mainstreaming⁴⁰ at all level of governance.

Overall, the Twelfth Five Year Plan, while fulfilling the recognition and reduction paradigm to some extent, falls way short of the redistribution paradigm and is in a lot of respects a step down from the Eleventh Five Year Plan

B) Eleventh Five Year Plan

The Eleventh Five Year Plan had also raised similar concerns for provision of micro credits and formation of SHGs as in the Twelfth Year Plan.⁴¹ The Eleventh Five Year Plan similarly provides for gender budgeting and gender mainstreaming and is overall a great initiative, but, the specific direction in which the allotted funds would be used has not been laid down.

However, the Eleventh Five Year Plan makes significant observations

³⁹ Gender Budgeting is primarily a way of ensuring that public resources are allocated in equitable ways so as to ensure that the allocation is done in a manner which reflects the concerns of each gender.

⁴⁰ Gender Mainstreaming in the planning process involves applying a gendered lens to different activities with the stated aim of reducing gender disparities.

⁴¹ XI Five Year Plan, REPORT OF THE WORKING GROUP ON EMPOWERMENT OF WOMEN, Ministry of Women and Child Development, Government of India, 14, available at http://www.aicte-india.org/downloads/woman_empowerment.pdf.

with regard to the unpaid nature of women's care work which could be attributed to a large extent to the setting up of a Working Group of Feminist Economists to gender the Plan. The Report explicitly recognizes and calls for the need to challenge the "horizontal occupation segregation" or the concentration of women in "feminized jobs" which are based on gender stereotypes of natural traits and abilities.⁴² The Plan explicitly recognizes that because these functions are carried out by women they are the lowest paid while at the same time offering no opportunity for advancement.⁴³ The Report also calls out the absurdity of women being reported as non-workers, considering women spend an average of 8-10 hours a day in domestic chores.⁴⁴ The Report goes on to elaborate the need for social security and ensuring regulation in the unorganized sector and also lays down detailed plans for implementation.⁴⁵

The Report also makes some far reaching and well-rounded recommendations.⁴⁶ Thus, overall the Eleventh Five Year Plan provides a

⁴² *Id.* at 21.

⁴³ *Id.*

⁴⁴ *Id.* at 23.

⁴⁵ *Id.* at 36.

⁴⁶ Some of the recommendations relevant to the discussion are as follows:

1. *Increasing the mainstream financial services available to women;*
2. *Developing or adapting legal frameworks that eliminate the gender biases of financial institutions;*
3. *Increasing inclusion of poor women and other vulnerable groups to give them a voice in economic bodies and financial structures;*
4. *Supporting the incorporation of gender perspectives into budget processes;*
5. *Undertaking and disseminating gender analyses of economic policies;...*
7. *The Eleventh Plan should address the unpaid work of women in an explicit manner through a well-designed strategy that will inform all planning and programming for women. The Eleventh Five Year Plan should emphasize the need for collection of comprehensive data on women's paid and unpaid work, women's asset ownership and other sex segregated data.*

Id. at 21..

holistic framework for the recognition, reduction and redistribution of work and is an exemplary policy initiative which should dictate further policies and legislations.

2) NATIONAL POLICY FOR THE EMPOWERMENT OF WOMEN

In laying down the framework for the economic empowerment of women, the policy states that the contribution of women to socio-economic development as producers and workers needs to be recognized in both the formal and informal sectors and has included home based workers within the ambit of workers⁴⁷. In achieving this objective, it calls for the reinterpretation and redefinition of conventional concepts of work wherever necessary so as to reflect the true contribution of women to the economy.⁴⁸ It also provides for the provision of support services like child care facilities to enable greater participation of women in social and public life.⁴⁹ It also discusses the need for provision of safe drinking water and toilet facilities close to the household. This reduces the time spent in household chores.⁵⁰ Thus it recognizes that participation of women in public life can be increased by the state taking some responsibilities for the services, which are otherwise often left for women to perform on their own.

However, in terms of recognition of contribution, it alludes to home based workers, but, home based workers are traditionally those workers who work from home to produce goods which are at some point sold in the

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

market⁵¹ and therefore the recognition is still in terms of only those activities which are valued in the market. There is no explicit mention of recognizing the work performed by women in the nature of “unpaid care work” as adding any productive value to the economy. The redistribution paradigm is also hardly reflected unless one reads into the stated aim of “changing societal attitudes”.

3) NATIONAL COMMISSION FOR ENTERPRISES IN THE UNORGANIZED SECTOR (NCEUS) REPORT ON SOCIAL SECURITY AND THE UNORGANIZED WORKERS SOCIAL SECURITY ACT

The NECUS Report 2007 (Recognition of Work and Promotion of Livelihood in the Unorganized Sector) [*hereinafter* the Report] recognizes the ‘double burden of work’ which is that while women may not be contributing to the activities which have a price tag in the market, a large part of their time is nevertheless occupied by ‘socially productive and reproductive labour.’⁵² The Report recognizes that such burden of work being imposed on them is the reason for the low participation rate of women in other activities. In this context the Report notes that while women spend almost 35 hours a week on child care, care of old and the sick at home and on household maintenance

⁵¹ The definition of ‘home based worker in the Unorganized Workers Social Security Act 2009 under Section 2(b) reads as follows:

‘home based worker’ means a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other input.

⁵² RECOGNITION OF WORK AND PROMOTION OF LIVELIHOOD IN THE UNORGANIZED SECTOR, National Commission for the Enterprises in the Unorganized Sector, 75 (2007).[NCEUS Report]

activities, men spend less than four hours a week on such activities.⁵³ Furthermore, as against 53% women in rural areas and 65% women in urban areas (in age group of 15- 59 years) being engaged in domestic work as principal status, only 0.4% men were engaged in domestic duties as principal status.⁵⁴ The Report also recognizes that activities performed by women help to significantly save household income.

However, despite such recognition for unpaid care work being accorded in the 2007 Report, the earlier NCEUS Social Security of Unorganised Workers Report of 2006 had defined unorganised workers as “all those who are working in the unorganised sector and the workers in the formal sector without any employment security and social security provided by the employer” and therefore explicitly excluded unpaid workers from its domain.⁵⁵ In doing so, it failed to recognize the heavy risks that unpaid workers are faced with on an everyday basis and their position as the most exploited lot and failed to provide them with even minimum benefits of health security and old age security or life insurance.⁵⁶

The Unorganized Workers Social Security Act, 2009 draws on the NCEUS Report 2006 and in doing so excludes unpaid workers from the definition of “unorganized workers” to whom the act applies.⁵⁷ “Unorganized

⁵³ *Id.* at 77

⁵⁴ *Id.*

⁵⁵ Neetha N., ‘Invisibility’ Continues? *Social Security and Unpaid Women Workers*, 41 ECON POLIT WKLY 3497, 3497 (2006).

⁵⁶ *Id.*

⁵⁷ Unorganized Workers Social Security Act, 2009, § 2 (m): “unorganized worker” means a home based worker, self-employed worker or a wage worker in the unorganized sector and includes a

workers” seeks to cover only wage workers⁵⁸ who earn remuneration for the work done by them, home based workers⁵⁹ and self-employed⁶⁰ workers who although not employed by an employer, earn a stipulated amount every month. The Act, similar to the NCEUS Report removes from its ambit unpaid workers.

This has an unproportional impact on women whose work is largely in the nature of unpaid care work and therefore the Report has intentionally or unintentionally excluded a large proportion of women from the ambit of social security.⁶¹ Thus the stated aim of an inclusive approach to provision of social security by the Report, largely remains a distant goal as far as unpaid workers (largely comprising of women) are concerned.

4) *THE MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE ACT (MGNREGA)*

The Act provides that one third of all workers should be women and

worker in the organized sector who is not covered by any of the Acts mentioned in Schedule 11 to this Act

⁵⁸ Unorganized Workers Social Security Act, 2009, § 2 (n): “wage worker” means a person employed for remuneration in the unorganized sector, directly by an employer or through a contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and the State Government as the case maybe.

⁵⁹ NCEUS Report, *supra* note 53.

⁶⁰ Unorganized Workers Social Security Act, 2009, § 2(k): “self-employed worker” means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganized sector subject to a monthly earning of an amount as may be notified by the Central Government or the state Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government.

⁶¹ Neetha, *supra* note 55.

ensures that both men and women are paid the same wages. It also provides for setting up of crèche facilities where there are more than five children present on the site. It also requires that the work granted to women should be within a five km radius from their house, making it easier for women to take up jobs under MNREGA.

As noted above, one of the ways of ensuring the reduction of unpaid care work is to ensure that there are job opportunities available outside of the home. The MNREGA has provided job opportunities for women, which prior to the scheme was available to very limited women. It has also fostered economic independence in women⁶², where none existed earlier, by ensuring that women collect their own wages and have control over how their money is spent and reduces their dependence on the male members.⁶³ Thus, provision of economic employment opportunities outside of the home increases the bargaining position of women. This increase in bargaining position is evident from the shift in the burden of housework being performed solely by women earlier, to now being shared by both. In a study on the impact of MNREGS, some respondents noted that their husbands are willing to undertake chores such as preparing tea for them, which would earlier not have been possible.⁶⁴ Economic independence also allows them to decide where money is to be spent, and it can be seen that women sometimes

⁶² Amrita Chaterjee, *Employment Guarantee And Women's Empowerment In Rural India*, https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=IAFFE2011&paper_id=120 (last visited July 5th, 2015).

⁶³ Reetika Khera and Nandini Nayak, *Women Workers and Perceptions of the MNREGA*, 44 *ECON POLIT WKLY* 49 (2009).

⁶⁴ Ashok Pankaj and Rukmini Tankha, *Empowerment Effects of the NREGS on Women Workers: A Study in Four States*, 45 *ECON POLIT WKLY* 45 (2010).

spend it in a way which reduces the drudgery of their housework.⁶⁵ Thus it will not be a stretch to say that someday the imbalance in the household will improve if the MNREGA's functioning is improved further.

MNREGA has also provided a forum for the socialization of women and a platform for them to voice their common issues⁶⁶ and has helped them to overcome the isolation which the private sphere has for long imposed on women. This can also ensure that women come together to demand the sort of work which will reduce their workload and free up their time.⁶⁷

Another drawback of the enormous time spent by women behind closed doors on household chores was that they had very little time for civic duties. Also, owing to the association of women with the private sphere, such civic engagement was not encouraged. With the advent of the MNREGA, women's participation in Gram Sabhas has increased drastically⁶⁸ which can be assumed to be arising out of the acceptance of women in the public sphere, fostered by the MNREGA.

Of course there is a lot of scope for improvement of the MNREGA and it can draw on the Maharashtra Employment Guarantee Scheme for this

⁶⁵ In the study it was found that one woman worker in Kangra used her NREGS income for the construction of a toilet inside her house, which would significantly reduce the time spent in hunting for sanitary facilities, carrying water to such facilities etc.

Id.

⁶⁶ *Id.*

⁶⁷ Sukti Dasgupta And Ratna M. Sudarshan , *Issues In Labour Market Inequality And Women's Participation In India's National Rural Employment Guarantee Programme*, POLICY INTEGRATION DEPARTMENT, INTERNATIONAL LABOUR OFFICE (February 2011), http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_153042.pdf

⁶⁸ Pankaj and Tankha, *supra* note 64.

purpose. There can be provision for breastfeeding breaks for lactating women, flexibility in working hours, improved crèche facilities by linking it to other national child care schemes, maternity benefit for women⁶⁹, as well as provision of make shift toilets on the work site to name a few.⁷⁰ Redistribution of work of women has to go hand in hand with MNREGA if empowerment has to be truly achieved, as it could otherwise lead to a situation of increasing the work of women whereby they have to undertake work both inside as well as outside the household.⁷¹

The greatest contribution of MNREGA therefore remains in its provision of opportunity for women outside of the house. In fact a study of women in six MNREGA district, notes that in the absence of MNREGA, they would have continued working at home or remained unemployed.⁷² Not only has this drastically shot up the number of women engaging in paid labour, it has also had a domino effect within the household as well. It serves the reduction paradigm very well by providing services such as drinking water on site and crèche facilities on site, activities on which women would have otherwise spent a significant amount of their time. Thus, while the recognition and reduction paradigm are served by the MNREGA directly, in its implementation, an impact on the redistribution paradigm can be seen through the sharing of household work by both men and women as a result of increased bargaining power of women. The MNREGA remains one of the

⁶⁹ Chopra, *supra* note 28.

⁷⁰ Pankaj and Tankha, *supra* note 64.

⁷¹ Chopra, *supra* note 28.

⁷² Khera and Nayak, *supra* note 63.

most impactful schemes by the Government in terms of dealing with unpaid care work.

5) MATERNITY BENEFIT ACT AND PATERNITY LEAVES

The Act provides for payment of cash maternity benefits for certain cases of confinement⁷³, grant of leave and other medical facilities besides providing for wages at an average daily wage during the period of actual absence.⁷⁴ Maternity benefit is applicable for a maximum period of twelve weeks and during this period the woman cannot be dismissed from work.

However, the Maternity Benefit Act has limited coverage and leaves a vast majority of women in the unorganised sector open to vulnerability. Therefore, based on the recommendations of the Eleventh Five Year Plan, the Government under the Ministry of Women and Child Development, started the Indira Gandhi Matritva Sahyog Yojana to cover all women who are not already covered under the existing maternity benefit provided by the Government to its employees. It is a conditional maternity benefit scheme so as to provide a modest maternity benefit to women in order to partly compensate for their wage loss and to ensure that they do not feel compelled to work till the last stage of delivery.⁷⁵ The scheme seeks to provide a cash

⁷³ As per the definition of 'confinement' in Section 2 (3) of the Act, a woman is eligible for maternity benefit even if pregnancy results in the birth of a still child if the child is born after 26 weeks of pregnancy.

⁷⁴ Maternity Benefit Act, § 5 (1)

⁷⁵ INDIRA GANDHI MATRITVA SAHYOG YOJANA- A CONDITIONAL MATERNITY BENEFIT SCHEME, IMPLEMENTATION GUIDELINES FOR STATE GOVERNMENTS / UT ADMINISTRATIONS, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA (April 2011), <http://wcd.nic.in/schemes/sabla/IGMSYImpGuidelinesApr11.pdf>

incentive of Rs.4000 directly to women above the age of 19 years subject to the woman fulfilling specific conditions relating to maternal child health and nutrition. However, the benefits of this scheme are available only on the fulfillment of certain conditions which require a demonstration of “good behaviour” such as registering pregnancy, breast feeding the baby for six months, amongst others.⁷⁶ While these conditions have the aim of improving the overall birthing process, they fail to account for various institutional failures and cultural taboos which will have the effect of throwing a lot of women out of its coverage and also reeks of paternalism towards women.

The Central Civil Services (Leave) Rules, 1972 were amended in 1999⁷⁷ and vide Rule 43A, provision for paternity leave was included.⁷⁸ Under Section 43A, a male government servant (including an apprentice) with less than two surviving children would be granted a period of 15 days of paid paternity leave which can be availed either 15 days before the date of delivery or within six months post-delivery.⁷⁹ The Ministry of Personnel via a later notification (No. 13018/1/2009-Estt.(L)) extended this provision of maternity leave even in the case of adoption of a child.⁸⁰ The period of 15 days provided under the Indian law falls way short of the paternity leave

⁷⁶ Lakshmi Lingam, Vaidehi Yelamanchili, *Reproductive Rights and Exclusionary Wrongs: Maternity Benefits*, 46 ECON POLIT WKLY 94, 95 (2011).

⁷⁷ GOVERNMENT OF INDIA, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS, DEPARTMENT OF PERSONNEL & TRAINING, NOTIFICATION NO. 13018/2/1999-Estt.(L), available at [http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02est/13018_2_98-Estt\(L\).pdf](http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02est/13018_2_98-Estt(L).pdf)

⁷⁸ The Central Civil Services (Leave) Rules, 1972, § 43A.

⁷⁹ *Id.*

⁸⁰ GOVERNMENT OF INDIA, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS, DEPARTMENT OF PERSONNEL & TRAINING, NOTIFICATION NO. 13018/1/2009-Estt.(L), available at [http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02est/13018_1_2009-Estt\(L\).pdf](http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02est/13018_1_2009-Estt(L).pdf)

granted in many countries of which Sweden has been the leader, encouraging the fathers in the country to take whole two months off to build bonds with the young.⁸¹

However, there is no uniformity with regard to paternity leave in the private sector with paternity leave ranging from zero days and going up to 12 weeks.⁸²

Biological parentage does not equal social parentage, and social parentage does not equal womanhood.⁸³ Men can take care of children as well as women. As co-parents, rather than primary mothers, women would find more time for work and other interests as men do now.

Thus, the concept of paid paternity leave in India has to be more widely recognized and an extension of the period of leave must seriously be contemplated in pay commission reports and other policies.

6) CRÈCHE FACILITIES UNDER DIFFERENT LEGISLATIONS

Section 48 of the Factories Act, 1948, provides that crèche facilities must be provided in every factory which employs more than thirty female

⁸¹ While both Germany and USA do not grant any paternity leave, some countries grant paternity leave of 1-5 days (Argentina - 2days, Brazil - 5 days, Indonesia - 2 days, Saudi Arabia -1 day), others between 5-15 days (Denmark - 14 days, France - 14 days, Philippines - 7 days, Portugal - 14 days, UK - 14 days at a fixed amount of 108.85 pounds). Some countries however have given serious consideration to the otion of paternity leave and grant long periods of paternity leave (Italy -13 weeks (80% pay), Sweden - 8 weeks, Norway - 45 weeks (80% pay), Canada - 35 weeks (55% pay)) Aparna.Chandra, *Father, You Are Eligible*, BANGALORE MIRROR, May 8, 2011, at 6.

⁸² *Id.*

⁸³ Margaret Mead, *Some Theoretical Considerations On The Problem Of Mother-Child Separation*, 24 AM. J. ORTHOPSYCHIATR. 471 (1954).

workers, for children aged below six years. It requires that such children shall be under the 'charge of women trained in the care of children and infants.' It gives the State Governments the right to make rules for provision of additional facilities as well as for requiring the provision in any factory of free milk or refreshment as well as provision of facilities for the mothers of such children to feed them at the necessary intervals.⁸⁴

Rule 44 of The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 provides for the establishment of a well-functioning and well ventilated crèche in every establishment where twenty or more workmen are ordinarily employed as migrant workmen and in which employment of migrant workmen is likely to continue for three months or more. The burden of establishing such crèche is on the contractor or alternatively on the principal employer. It is important to note here that unlike the Factories Act, the criterion for the establishment of a crèche is much lower in the sense that the number of workmen required is just *twenty workmen* as against *thirty women workmen* requirement under the Factories Act.⁸⁵

Similar requirements of provision for crèches has also been provided under Section 14 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (the provisions are the exact same as that under the Factories Act) as well as under Section 35 of the Building and other

⁸⁴ Factories Act, 1948, § 48

⁸⁵ The Inter-State Migrant Workmen (Regulation Of Employment And Conditions Of Service) Central Rules, 1980, Rule 44.

Constructions (Regulation of Employment and Conditions of Service) Act, 1996 (requires the presence of more than fifty female building workers)

Another pioneering scheme by the Central Government is the Rajiv Gandhi National Crèche Scheme for the Children of Working Mothers. Although the Scheme is meant for working mothers, it recognizes that such facilities “*are not only required by working mothers but also women belonging to poor families, who require support and relief from childcare as they struggle to cope with burden of activities, within and outside the home.*”⁸⁶ The crèche facilities can be availed by parents whose monthly income do not cross Rs.12,000 in a month at the payment of a nominal fee and is open to children below the age of six years. The crèche facilities are required to be well equipped and provision has also been made for the delivery of nutritional food and safe drinking water in the crèche. It also covers health care facilities and requires the appointment of crèche workers equipped in providing preschool education to the children. Overall the Scheme is a great initiative which completely fulfills the recognition paradigm by noting the work that women are required to do both inside as well as outside their homes as well as the reduction paradigm by noting the Government’s responsibility in reducing that burden of child care which solely falls on women in most cases.

⁸⁶ Rajiv Gandhi National Crèche Scheme For The Children Of Working Mothers, Government Of India, Department of Women & Child Development, Ministry of Human Resource Development, *available at* <http://wcd.nic.in/SchemeChildren/RajivGandhiCrecheScheme.pdf>

7) DRAFT BILL BY THE MINISTRY OF WOMEN AND CHILD DEVELOPMENT PROPOSING WAGES FOR HOUSEWORK TO BE PAID BY THE HUSBAND.

The Ministry of Women and Child Development had proposed a draft bill for a part of the husband's salary being transferred to the wife's bank account in recognition of all the domestic work performed by the wife all day long. Such a part of the husband's salary was to be tax free and was aimed at providing women finances to run the household and also to provide for personal expenditures of the wife. Such payment was to be seen as an honorarium for the services of the wife which are otherwise rendered free. But does payment of money by the husband to the wife solve the problem of "unpaid care work" as has been outlined in the paper?

A similar effort had been made in the 1990s in the wages for housework movement. A strong lobby of feminists, led by Selma James, Maria Dalla Costa and Silvia Federici, started the Wages For Housework (now called Wages Against Housework) campaign whereby they argued that housework is a task that is not only imposed on women but a very careful strategy of the capitalist patriarchal society by which housework and care for the family is made a natural attribute of a women, an attribute that is essential to realization of our feminine character and has therefore kept us out of the social contract theory.⁸⁷ MacKinnon also echoed support for this movement as she felt that men earned wages for their labour which was produced by

⁸⁷ Silvia Federici, *Wages Against Housework*, <http://caringlabor.wordpress.com/2010/09/15/silvia-federici-wages-against-housework/> (last visited on June 10th, 2015)

women who were in turn paid nothing.⁸⁸ She also posited that capitalism kept women as reserve capital, calling upon them in times of need of labour and paying them pittance because they are usually used to receiving nothing in return for labour.⁸⁹

Therefore, in demanding payment for unpaid care work, it not only raises the status of women's work but also allows recognizes that women enjoy a degree of autonomy and creativity in housework and should be allowed to pursue it, while at the same time the demand for remuneration would ensure that they are not economically dependent on their families while pursuing their roles as housewives.⁹⁰

However, the proposal, as many feminist writers have come to recognize, is riddled with many problems. First, it offers a very economist and superficial solution, without going to the root of the issue. In touting wages as the ultimate answer to the problem of unpaid care work, it assumes that by monetizing the activities women would be happy doing it.⁹¹ It does not question the gender bias in the society by which such work is thrust upon and made the responsibility of women in the first place. While it recognizes the work done by women, it fails to redistribute by seeing the ultimate solution in the form of wages. Second, it does not indicate the source of funding for the wages.⁹² If the wages have to come from the husband then it

⁸⁸ KATHERINE MACKINNON, *TOWARDS A FEMINIST THEORY OF THE STATE* 66-7 (1st ed. 1989).

⁸⁹ *Id.*

⁹⁰ Sujata Gothoskar, Rohini Banaji and Neelam Chaturvedi, *Women, Work, Organisation and Struggle*, 18 *ECON POLIT WKLY* 339, 341-343(1983).

⁹¹ Kaluzynska, *supra* note 9.

⁹² *Id.*

makes the women excessively dependent on the earnings and income status of the husband.⁹³ It also ignores the question of unpaid care labour rendered by mothers, sisters and other women in the family.

8) SYSTEM OF NATIONAL ACCOUNTS

The National Sample Survey (NSS) still classifies tending to domestic duties as being as activities “not in the labour force.” Activity Status Codes 92 and 93, attended to domestic duties only and attended to domestic duties and was also engaged in free collection of goods (vegetables, roots, firewood, cattle feed, etc.), sewing, tailoring, weaving, etc. for household use respectively, were categorized as “not a part of the labour force” in the NSS Report No. 537.⁹⁴

VI. CONCLUSION

For any social policy to be truly successful it must:

- i) Indicate recognition of women’s contributions through unpaid care work
- ii) Reduce the drudgery associated with performing unpaid care; and
- iii) Redistribute responsibilities for care.⁹⁵

⁹³ One author notes that while this solution may immediately only cause a redistribution of income in the family, in the long run, wage earners will make demand for increased wages from their employers in order to fulfill this responsibility and also seek facilities like crèche allowance *Supra* note 30.

⁹⁴ *NSS Report No. 537: Employment and Unemployment Situation in India*, at 13-15 (2009-10), http://www.indiaenvironmentportal.org.in/files/file/NSS_Report_employment%20and%20unemployment.pdf

⁹⁵ Chopra, *supra* note 28.

The following table demonstrates how far the Indian policies have matched up to the ‘Three Rs’ framework details in the preceding section.

The 3R Paradigm	Strategies	Policies
Recognition	Recognition as economic activity in collection of statistical information	The NSS classifies domestic duties as not being a part of the labour force
	Provision of Social Security to unpaid care workers	The NCEUS Report 2006 and the Unorganized Workers Social Security Act do not provide Social Security to Unpaid care workers
	Other forms of recognition (recognizing the drudgery of unpaid care work and its unilateral burden on women)	1) Both the Five Year Plans 2) National Policy for the Empowerment of Women 3) NCEUS 2007 Report
Reduction	Crèches	1) Section 48 of the Factories Act, 1948 2) Rule 44 of The Inter-State Migrant Workmen (Regulation Of Employment And Conditions Of Service) Central Rules, 1980 3) Section 14 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 4) Section 35 of the Building and other Constructions (Regulation of Employment and Conditions of Service) Act, 1996 5) Rajiv Gandhi National Crèche Scheme For The Children Of Working Mothers. 6) National Rural Employment Guarantee Act
	Provision of drinking water	1) Rajiv Gandhi National Crèche Scheme For The Children Of Working Mothers 2) National Rural Employment

		Guarantee Act
	Maternity Benefit	1) Maternity Benefit Act, 1961 2) Indira Gandhi Matritva Sahyog Yojana
Redistribution	Paternity Leave	The Central Civil Services (Leave) Rules, 1972, Rule 43A
	Provision of jobs to break down sexual division of labour	MNREGA

While, the Recognition and Reduction paradigm seem to be visible to a some extent in Indian policies on unpaid care work, policies aimed at redistribution are far and few. Even in the recognition paradigm, there is an urgent need for statistical collection to consider unpaid care work as economic activity as is done in the statistical collection of most countries and international organizations. Even the ones which address the redistribution question do so in a vague and farfetched manner and there has been no attempt to shift the burden explicitly. The sub-text of most programmes has been that even while ensuring the employment of women, there should not be any interfere with their primary responsibilities of care in the domestic domain.⁹⁶ Unpaid care work in India continues to remain the domain of women and even while they are making forays into economic employment, the burden of house work continues to rest solely on their shoulders. It is the duty of every state to ensure that public facilities are available to women who wish to ease such a burden. This calls for a whole new outlook to the drafting of policies in India.

⁹⁶ Palriwala and Neetha, *supra* note 4.