

Domestic Work, Unpaid Work and Wage Rates

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A comprehensive law for domestic workers in India covering all aspects of their working conditions is yet to come. However, the debate on legislative protection for domestic workers has focused unduly on labour laws and wage rates, ignoring the valuation of unpaid care and domestic labour performed by women in the household. The rights of women in matrimonial property are also overlooked. A consequence of such a lack of recognition of unpaid labour is the effect it has on determination of wage rates for domestic work.

The Domestic Workers Convention (Convention No 189) adopted by the International Labour Organisation (ILO) coincided with a renewed campaign to have a national-level legislation and policy dealing with domestic workers in India. A central question in debates across the country has been whether to focus on expanding the coverage of existing labour laws to include domestic workers or, alternatively, to have a single sector-specific legislation at the national level addressing the working conditions, social security, wage rates, and employment relations of domestic workers. Domestic workers are now partially covered in some central- and state-level legislation. At the central level, the most recent legislation that also covers domestic workers is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.¹ Earlier the Unorganised Workers Social Security Act, 2008 had expressly included domestic workers.²

A comprehensive law for domestic workers covering all aspects of their working conditions is yet to be enacted. However, the debate on legislative protection for domestic workers has focused unduly on labour laws, ignoring the debates on valuation of unpaid care and domestic labour performed by women in the household, and the consequences of such lack of recognition and valuation of unpaid labour, which affects the determination of wage rates for domestic work.³ This paper examines how the debates over unpaid labour, over the rights of women within the family, particularly over matrimonial property, and over fixing minimum wages have affected the wage rates of domestic work in India today.

Unpaid Labour, Matrimonial Property and Wages

The lower wages accorded to women's domestic work mirror the social and legal value accorded to unpaid work within the household. The lower wages for women's care and household work compared to work performed outside the home (see the section on the minimum wage law below) is reflected in other branches of the law. The law of torts, motor vehicle law, and insurance law have made some efforts to assess the unpaid contribution of women to the household. The approach in these branches of law has some bearing on the manner in which wages are fixed under the Minimum Wages Act (MWA), 1948. In *Lata Wadhwa vs State of Bihar*, the Supreme Court dealt with the monetary value of services rendered by "housewives" to the household to compute the compensation payable under the Motor Vehicles Act, 1988 on their death in an accident.⁴ The court was of the view that "taking into consideration, the multifarious services rendered by the housewives for managing the entire family even on a modest estimation

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should be Rs 3,000 per month and Rs 36,000 per annum. This would apply to all housewives between the age group of 34 and 59 and as such who were active in life." As far as elderly women in the age group 62 to 72 were concerned, the value of the services rendered by them to the household was modified by the court to Rs 20,000 per annum with the appropriate age-specific multiplier as provided in the Motor Vehicles Act, 1988 in addition to the conventional sum of Rs 50,000 awarded in such cases.⁵

This quantification of the value of housework performed by women has been followed in tort cases where compensation was payable due to medical negligence.⁶ Where the deceased happens to be a working woman, the position is not very different. In one such case involving the death of a working woman due to negligence, the Gauhati High Court proceeded to compute the quantum of compensation.⁷ On the ground that she was a daily wage earner, the court held, "Even if the earning of the petitioner's wife is taken at the minimum, it would not be unreasonable to compute her earning at about Rs 1,500 a month." This was done without any reference to the minimum wages payable in the state when the accident took place. It must be pointed out that in cases where women are earning, their contribution to the household is ignored and compensation payable by the negligent party is only to recompense the loss of earning. Such an approach completely ignores that working women in a majority of cases also perform the double burden of household and care work, and that this aspect also needs to be factored in at the time of calculating compensation for such losses.

What is striking in such cases related to compensation for death or negligence is that the law, and therefore often the courts, proceeds without reference to well-acknowledged methods for determining the unpaid household labour performed by women in the household.⁸ In several cases, when a "housewife" dies, an arbitrary amount is assumed to be her notional income for the purpose of calculating the compensation payable under the Motor Vehicles Act, 1988, with an additional amount added towards compensation to her dependents for her pain and suffering. Yet it is disappointing that the courts nowhere explain the basis on which they arrive at the values assigned to household work. That the amount is arbitrary is seen from the fact that the courts neither refer to the minimum wages applicable in a state for performing the kind of care work the deceased would have performed in her house (or its closest equivalent in some comparable employment) nor to the wages for domestic work (although at the time when some of these early cases were decided, such notifications fixing wages for domestic work were yet to be issued). As a result, there is no judicial acknowledgement of the quantum of unpaid household and care work such a woman may have contributed to the household for nurturing and sustaining other family members.⁹ Such quantification and acknowledgement of the work put in by (mainly) women does not imply that wages are due or payable for household work or care work performed by members of the family, but it nevertheless assists in making such work visible and according it

due recognition and economic value. Quantification of the value of housework performed by women is welcome because it makes visible that aspect of housework which is otherwise made invisible. It will result in improving the legal, and hence social and economic, status of the household and care work performed primarily by women, whether as members of the household or as domestic workers. Wages for such domestic workers are therefore inextricably linked to the legal, social and economic aspects that determine the value of such household labour while determining compensation under tort or insurance law.

Contribution in Matrimonial Property

Scientific methods for determining the value of household work are necessary not only for determining the wages of domestic workers under labour law or the compensation payable under tort law, but also within family law for determining the contribution of women in matrimonial property. The rights, by virtue of marriage, that a woman obtains over property acquired during marriage, but which might be legally registered in the name of the spouse, would broadly fall into the category of matrimonial property. The logic of matrimonial property is based on recognising and assigning legal and economic value to the contribution of the non-"working" (that is, not working in paid employment outside the house, but nevertheless performing unpaid work in the household) to assets created during a marriage. The basis for according such a right over matrimonial property is to acknowledge the unpaid contribution of a spouse, often the woman, in caring for the children, elderly, and other members of the household as well as the unpaid domestic work performed in sustaining the household and, thus, in contributing to the creation of assets and property, often held solely in the name of the man. The issue of matrimonial property comes to the forefront particularly at the time of divorce/dissolution of marriage, when the question whether the woman is entitled merely to maintenance or whether she can also claim a share in the assets and property obtained by the man in the course of marriage needs to be addressed.

The growth of matrimonial property law in other countries in the world points to the need to evolve a rational and transparent manner for valuing such contributions by both spouses. As noted later, the constant undervaluation of unpaid work done by women finds reflection in other branches of law such as labour law, where wages for domestic work are driven lower. Such undervaluation has repercussions in family law where the idea of matrimonial property is in the nascent stage.¹⁰ Matrimonial property law seeks, among other matters, to quantify a spouse's contribution to the marriage to ascertain shares at the time of death or dissolution of marriage. Acknowledgement of the care work done by women in the household is an important step in the development of a matrimonial property law and in establishing the prior right of a woman/widow in the property of her husband even if such assets are nominally purchased or held in the name of the husband alone. Increasingly, courts in India take the position that "judicial notice can certainly be taken of the services being rendered by

the housewife to the family.”¹¹ This is a welcome development, and in turn will favourably affect the social and economic value assigned to such work, whether unpaid or performed for wages.

The campaign by domestic workers and trade unions for legislative coverage of domestic work and for a working life of dignity is in many ways closely linked to the demand by the women's movement for recognition of unpaid household and care work performed by women within the household. There has been a long struggle for recognising and assigning value to the unpaid labour done by women within the household. The UN System of National Accounts excludes production of services provided by members of the household and consumed within the household from the boundary of national accounts. This would cover domestic and care work usually performed by women, which is unpaid. By the use of time-use surveys, labour statistics is moving in the direction of the possible inclusion of domestic and care work in the scope of an economic activity.¹²

Gendering of Domestic Work and the Wage Gap

The differences of wage rates between men and women and also wage rates across employments bring into focus the limitation of one of the few labour laws that applies to domestic workers – the Equal Remuneration Act (ERA), 1976. The ERA in its preamble declares that it is to provide for payment of equal remuneration to men and women workers, and to prevent discrimination against women on the ground of sex in the matter of employment.

Section 4 of the ERA provides that men and women should be paid equally for the “same work or work of a similar nature”. In addition, the ERA mandates each establishment to maintain gender neutrality in remuneration. By implication, same or similar work across two or more establishments cannot be compared under this Act. Even within the same establishment, the law mandates that comparison can be only between work that is the same or of a similar nature. The “sameness” is assessed on the basis of levels of skill, effort, and responsibility for the work performed under similar working conditions. Section 2(h) of the ERA defines “same work or work of a similar nature” to “mean work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment”.

Studies have documented the disparity between the wage rates of men and women in India.¹³ One of the reasons for this has been the interplay between the MWA and ERA and their effects on wage rates. Wages for the kinds of work performed predominantly by women are classified as “light work” (say, the agricultural operations of weeding and transplanting) compared to “hard work” performed largely by men who are paid higher wage rates. Even in domestic work, for instance, Kerala has notified the wages of caretakers (predominantly women) at lower rates than other domestic work performed

predominantly by men such as “security/watchman/garden workers”. These wages fixed under the MWA cannot be challenged as violating the ERA since the two kinds of work are not the same or similar, based as they are on different skill sets, effort, and responsibility. The net result is occupational segregation by gender, and the wage gap is a continuing reality in India. Clearly, much needs to be done to compare different jobs performed by domestic workers that would perhaps reveal that they are similar in terms of skill, effort, and responsibility and therefore require the same pay. These aspects require closer study of ILO Convention No 100 (Equal Remuneration, 1951) and Convention No 111 (Discrimination in Employment and Occupation, 1958), both of which have been ratified by India so that laws move closer to the goal of decent work for domestic workers in the country.

The ILO committee of experts on the application of conventions and recommendations (CEACR) has had several occasions to review and comment on the implementation of Conventions 100 and 111 in India. These comments have been based on the periodic reports submitted by the Government of India on ratified conventions as well as observations submitted by trade union organisations to the ILO. A review of the reports of the CEACR over the years reveals that one of the principal complaints has been on the consistent wage gap between the wages of men and women workers, and the absence of a mechanism to assess the value of two seemingly different kinds of work to ascertain if they are of equal value.

Article 39 (d) of the Constitution directs the government to ensure “that there is equal pay for equal work for both men and women”. The courts have interpreted Article 39(d) as directing “equal pay for equal work”. In *State of Haryana vs Charanjit Singh* the Supreme Court (sc) held that the principle of “equal pay for equal work” must satisfy the tests that the persons are performing equal and identical work, that the conditions are identical and equal, and that the same duties are being discharged by them to claim equal pay.¹⁴ The sc has recently clarified that where the employers are entirely different the principle of equal pay for equal work does not apply.¹⁵ As a result, comparing same or similar work across establishments or employers is not feasible and the ERA cannot be invoked for differences in wages between work such as cooking, performed primarily by women domestic workers in a house, and cooking, done primarily by men in hotels and restaurants. It comes as no surprise then that the law is unable to adequately address the lower wage rates to be found in occupations such as domestic work where women predominate.

Minimum Wages for Decent Work

One of the central pillars for ensuring conditions of decent work for domestic workers in India has been the wage rates notified for domestic work. Despite the patchy coverage of domestic workers under various labour laws, in recent years, some state governments have notified minimum wages for domestic workers. The MWA gives state governments the power to notify minimum wages for any employment where 1,000 or more workers are employed. Despite data that shows

that there are, at the very least, around 2.5 million domestic workers (other estimates place the number far higher),¹⁶ minimum wages were never notified for this group of workers until recently, and that too only by a few states. For instance, the notification for minimum wage rates and variable dearness allowance (VDA) effective from 1 April 2013 to 31 March 2014 in Karnataka has specified the following wage rates (Table 1).¹⁷

Table 1: Minimum Wage Rates for Domestic Workers in Karnataka (2013-14)

Class of Employment	Minimum Rate of Wages Payable Per Day		
	Basic	VDA	Total
Washing utensils/washing clothes/ housekeeping and looking after children	139-20	52-20	191-40
Washing clothes/washing utensils/ housekeeping and cleaning of house	134-20	52-20	186-40

Source: Department of Labour, Government of Karnataka.

This manner of notifying minimum wages for domestic work is rather unusual and several consequences flow from it. Under the MWA, the appropriate government has the discretion to add to the schedule those (“sweated”) employments in which the workers require the protection of the Act. (In the case of domestic work or where the employer is a private enterprise, the appropriate government is usually the state government.) It must be borne in mind that the minimum wages are fixed only for such scheduled employments. Consequently, a large number of persons working in industries or occupations not listed can continue to be paid wages less than the notified minimum one. This had been the situation for long with respect to domestic work. In recent years, a handful of states have listed domestic work as a scheduled employment, but this is by no means a uniform practice.

The MWA specifies that the rate of wages could be time or piece-rated, or a guaranteed time rate (a guaranteed minimum for piece-rated workers working for a fixed period irrespective of their actual output) and an overtime rate. The minimum rate of wages is also supposed to consist of a basic wage and a special allowance that is to be adjusted in accordance with the variation in the cost of living index. The wage rates fixed under the MWA specify whether the work performed in a scheduled employment is highly skilled/skilled/semi-skilled or unskilled. The appropriate government that fixes such minimum wages may choose, if it wishes, to appoint a committee to hold an enquiry prior to advising the government about how to fix or revise the minimum wages. In the case of most other employments, the committees ascertain the skill levels required to perform the various categories of work in that employment. The committees may also determine if the payment should be based on an eight-hour work day or if the nature of the tasks is such that the work should be remunerated on the basis of piece-rated wages. It indicates that the committees set up under the MWA prior to notifying minimum wages have studied the nature of the work performed and classified it according to the skill required to perform it.¹⁸

Wages are notified keeping in mind the nature of skills required for the job as well as the requirement of the worker and his/her family to maintain themselves. The term “minimum wage” has not been defined in the Act. While the law is silent on how to quantify these basic needs (“not merely their bare

sustenance but also the preservation of the efficiency of the worker”), the courts have indicated some of the elements of basic needs that must be met by a minimum wage rate.¹⁹ The wage is supposed to provide for the family of the worker and three other “consumption units”. Thus, minimum wages are not uniform across a state nor is the wage rate based merely on the fulfilment of basic needs. It also has an in-built element of a “return” for the worker’s skill level apart from addressing the basic needs of the worker and his/her family.

However, in the case of domestic work, a mere description of tasks has been deemed adequate by some of the states that have notified minimum wages for domestic work. Such a mode of notifying wage rates without specifying whether these are skilled/unskilled/semi-skilled jobs makes a comparison with other employments nearly impossible. The consequent loss of a comparator has meant that the appropriate governments have been free to set wages for domestic work at low levels, often at levels lower than that set for unskilled work in other employments. For instance, unskilled work in an employment not covered in any scheduled employment in Karnataka has a minimum wage rate of Rs 211.50, which is higher than the rate paid to domestic workers in the state. Treating domestic work as “different” and merely describing the tasks performed, as has been done in the case of domestic work, without categorising these in terms of skill sets as in the case of other jobs, is also a means to undervalue this work and deskill, at least in terms of wage rates, often highly skilled care work and other work performed by domestic workers. Further, wage rates for domestic workers are set on a daily rate basis than a monthly basis, encouraging employers to only pay domestic workers on a daily basis, which could deny them any form of a weekly off or paid leave. To take the example of Karnataka again, it is only a small number of employments such as agricultural work and domestic work that have wage rates fixed on a daily basis. That agricultural work has some of the lowest wages under the MWA in most states is also indicative of the low status accorded to domestic work while fixing minimum wages.

Wages: Time- or Piece-Rated?

Another aspect that needs to be kept in mind is whether the wages for domestic work should be fixed on a time-rated or piece-rated basis. The wages indicated in Table 1 are essentially time-rated and the tasks to be performed have been listed in the gazette notifications pertaining to domestic work. In the case of part-time domestic workers who work in several households performing similar tasks, a piece-rated wage would have to specify the size of the household and such a wage would be independent of the time required to perform it. The difficulty of determining a piece-rated wage for domestic work has resulted in most states notifying a time-rated wage per day and merely enumerating the various tasks a domestic worker is expected to perform. While draft comprehensive legislation for domestic workers has mooted piece-rate wages, these attempts at legislation have not been successful.²⁰ The wages for live-in domestic workers who stay on the premises of the household has not been separately indicated in the notifications issued

by the various states. Since this is a minimum wage, deductions are not permissible. Under the MWA, the minimum wages payable under the Act are to be paid in cash. However, where there is a custom to pay a part or all of the wages in kind, the government may authorise payment either wholly or partly in kind. Therefore, without the prior approval of the appropriate government, no employer can deduct any amount for providing boarding or lodging. The gazette notifications on wage fixation for domestic work are silent on the subject and in the absence of a clear indication that such deductions are impermissible a lowering of minimum wages often takes place.

While the coverage of domestic workers under the MWA is a welcome move, it is pertinent to note that coverage under this most basic labour law is abysmally low. Considering that the MWA is one of the laws with the greatest reach and has the potential to cover both agricultural and non-agricultural wage workers who number at least 200 million, the data shows that only around two million workers are covered by the MWA. Of this, less than 23,000 claims were preferred by workers for the denial of minimum wages across India in 2009. That this is an absurdly low figure will be apparent to anyone with a nodding acquaintance of Indian reality. Inspections under the MWA were also a dismally low figure across India and the inspectors launched around 10,000 prosecutions across the country for the same period.²¹

Another aspect of the MWA which adversely affects domestic workers is that wage rates under the law are set for a specific employment and are not uniform across a state or across employments even if the work performed is the same or similar.

While, in theory, the capacity of an employer to pay is irrelevant in determining the minimum amount needed by a worker and his/her family to meet their basic needs, the fact that minimum wages for same or similar work across two industries or employments in the same locality can differ indicates that the capacity to pay of each industry also has a role to play in determining wages. For example, while wages for housekeeping performed by domestic workers is usually less than Rs 200 per day in several states, the wages for a housekeeper, say, in a commercial hotel or hospital, is higher for an eight-hour work day. Likewise, the wages of a domestic worker who cooks in a household or cares for children or the elderly in it is usually lower than the wages payable to a cook or nurse in an establishment that is not a dwelling house. The inability of the law to compare "same or similar work" performed for two different industries in the same locality also indicates the systematic undervaluation of waged work, such as domestic work performed primarily by women in the household.

The Way Forward

It is important that the current impetus to put in place legislative protection for domestic workers within labour laws draws support from developments in family law, tort, and insurance law. Very often, law and economics traverse parallel tracks, with the law unmindful of the work done by statisticians and economists in the area. Drawing these different strands together is bound to have significant cascading effects on the legal and economic value assigned to women's unpaid work in the household, and the wage rates of domestic work.

NOTES

- 1 The term "aggrieved woman" is defined in Section 2(a)(ii) of the Act to include a dwelling place or house, and a woman of any age who is employed in such a dwelling place or house.
- 2 Section 2(n) of this Act defines a wage worker and includes "workers employed by households including domestic workers" in that definition.
- 3 This paper does not focus on unpaid family labour performed by contributing family members in providing goods and services. For an elaboration on how labour law and statistics differentially deal with unpaid domestic work and unpaid family work, see K Sankaran (2011): "Informal Employment and Challenges for Labour Law" in Guy Davidov and Brian Langille (ed.), *The Idea of Labour Law* (New York: Oxford University Press).
- 4 AIR 2001 SC 321. This judgment has since been followed in several cases.
- 5 Factors such as (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents have an effect on the compensation amount that is payable in case of death. The Supreme Court has clarified the manner in which principles of compensation are payable in *Reshma Kumari and Ors vs Madan Mohan and Anr* decided on 2 April 2013.
- 6 Compensation amounting to Rs 6,12,000 was ordered to be recovered by the state from the negligent doctors in *Sobhag Mal Jain vs State of Rajasthan*, AIR 2006 Raj 66.
- 7 *Suryya Das vs Assam State Electricity Board*, AIR 2006 Gau 59. Also see, K Sankaran (2006): "Women and Law", XLII, *Annual Survey of Indian Law*.

- 8 See, for instance, Lourdes Beneria (1999): "The Enduring Debate over Unpaid Labour", 138, *International Labour Review*, 295. The global substitute method evaluates how much it would cost to hire a domestic worker as a substitute to perform all household work performed by the unpaid member of the household; the opportunity costs method focuses on what alternative pay the person performing household work would have got in the job market; and the specialist substitute method evaluates how much a specialist with similar skills would have to be paid for each enumerated household task.
- 9 See, for instance, *Suman Lata Kuthiala vs Piyare Lal*, AIR 2010 (NOC) 7 (HP).
- 10 For an illuminating introduction, see B Sivaramayya (1999): *Matrimonial Property Law in India* (New Delhi: Oxford University Press). Also see Law Commission of India (2009): Report No 219 on "Need for Family Law Legislations for Non-resident Indians".
- 11 *United India Assurance Co Ltd vs Virambhai Ranchodbhai Patel*, AIR 2007 Guj 119 at 120.
- 12 For an analysis on women's work and its impact of their rights within the family and in matrimonial property, see K Sankaran (2008): "Family, Work and Matrimonial Property: Implications for Women and Children" in Archana Parashar and Amita Dhanda (ed.), *Redefining Family Law in India: Essays in Honour of B Sivaramayya* (New Delhi: Routledge).
- 13 NCEUS (2007): Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector; P Chavan and R Bedamatta (2006): "Trends in Agricultural Wages in India, 1964-65 to 1999-2000", *Economic & Political Weekly*,

- 23 September. Also see K Sankaran and R Madhav (2011): "Gender Equality and Social Dialogue in India", Working Paper 1/2011, International Labour Office, Geneva.
- 14 (2006) 9 SCC 321.
- 15 *S C Chandra vs State of Jharkhand* [2007] INSC 845.
- 16 See ILO (2011): *World of Work Magazine*, No 72.
- 17 Notification No KAE 17 LMW 2010, dated 25 January 2011 published in gazette dated 3 March 2011.
- 18 There is no indication that such committees were set up or existing committees consulted prior to notifying the wage rates for domestic workers.
- 19 *Workmen vs Management of Raptakos Brett and Co Ltd*, AIR 1992 SC 504. Apart from providing for food, clothing and rent, the amount due to an earner should also allow for fuel, lighting and other miscellaneous items of expenditure that would amount to 20% of the minimum wage. In addition, the minimum wage should also contain certain provisions for (1) children's education, (2) medical requirements, (3) minimum recreation, including festivals and ceremonies, and (4) provision for old age or marriage, which should constitute 25% of the total.
- 20 See, for instance, the Domestic Workers Welfare and Social Security Act 2010, which has an option for fixing wages on a piece rate basis for domestic workers.
- 21 Labour Bureau, Government of India, "Report on the Working of the Minimum Wages Act, 1948 for the Year 2009".