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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **“STATUTORY RECOGNITION OF UNPAID DOMESTIC WORKERS”**

AUTHORED BY - S.SUREKA

## **Abstract:**

Unpaid domestic work includes cleaning, cooking, childcare, eldercare etc. which are discharged by homemakers. In a patriarchal society like India with predefined gender roles, these works are predominantly performed by women who are expected to work without any recognition. Even the four new labour codes failed to recognise the social and economic value of this unpaid work but it is high time to bring policies to prevent women from exploitation. This study deals with what can be done by the Government and individuals to improve the working conditions for Homemakers.

**Key words:** Unpaid domestic work, Homemakers, Gender disparity, Invisible labour, statutory recognition.

## **1. Introduction**

A homemaker is a person who performs domestic and care work at home, due to patriarchal norms women end up playing this role. One of the important essence of Indian constitution is “Equality” under Article 14, 15 and 16 but the gender disparity among households and the lack of labour legislation for unpaid domestic work contradicts the constitution. According to the time use survey, in 2019 on average women spend nearly 299 minutes a day on unpaid domestic work whereas men spent only 97 minutes and Only 21.8 % of women aged 15-59 years were engaged in paid work in comparison to nearly 70.9 % of the men. However, if we were to take into account both paid and unpaid work, women’s participation reaches 85 % men’s is just 73 %<sup>1</sup>. As per this report, it is clear that the drudgery falls upon women and in India, this work is being perceived as unskilled work which makes it even difficult to recognise the socioeconomic value, time and skills spent doing this unpaid work and it is often seen as “not a work” so it is high time to recognise this work as “Work” and its economic value under the labour legislation. This study discusses the current status of homemakers and the way forwards.

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<sup>1</sup> NSS Report : Time use in India 2019

## 2. Cause and effect

The historical background of this gender disparity of labour started during the Industrial Revolution in the 19th century in Europe when the husband left for a job outside the home, directing all of the household tasks to the housewife. over the period it was glorified. In the 1960s Betty Friedan termed this as "housewife's syndrome" and criticized the glorification of homemaking and its oppressive nature as it will curtail the woman being an individual in a society.

In India as a progressive step, the apex court recognised this issue in several cases, in one such case the apex court said “A housemaker often prepares food for the entire family, manages the procurement of groceries and other household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much more. In rural households, they often also assist in the sowing, harvesting and transplanting activities in the field, apart from tending cattle. However, despite all the above, the conception that housemakers do not ‘work’ or that they do not add economic value to the household is a problematic idea that has persisted for many years and must be overcome”.<sup>2</sup> Dominant cultural norms construct the social practices which lead the household works and care works as essentials for women which curtails them from outside world and minimise their participation in paid labour force.

### i. Homemakers and their psychological health

Homemakers are not only subjected to physical exploitation, their mental health is at risk too. According to the data released by the National Crime Records Bureau report 2021, A total of 1,64,033 of persons died by suicide. Homemakers accounted for 51.5% of the total female victims (23,179 out of 45,026) and constitute nearly 14.1% of total victim who committed suicides (23,178 out of 1,64,033).<sup>3</sup> Nearly 30% of all women in a survey said that they had faced spousal violence and the daily hard and boring work that makes marriages oppressive and matrimonial homes suffocating. Human Development Report 2021-22 states that although more men than women die by suicide, more women attempt suicide.<sup>4</sup>

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<sup>2</sup> Kirti v. Oriental Insurance Co Ltd ( 2021 ) 2 SCC 166

<sup>3</sup> Accidental deaths and suicides in India (ADSI) 2021

<sup>4</sup> Geeta Pandey "What's behind suicides by thousands of Indian housewives ?" BBC News,16 December 2021

**ii. Women and their physical health**

According to UN World Food Programme (WFP) due to gender norms women are usually first to sacrifice their own food to ensure their families have enough so they often eat last and least. out of the 345 million people who are severely hungry in the world right now, nearly 60% are women and girls. In two-thirds of countries, women are more likely than men to report food insecurity and 1 in 3 women suffer with anaemia, a diet-related iron deficiency which can cause organ damage if left untreated and also the report estimated women do 2.6 times more unpaid care and domestic work than men do and earn 23 percent less for paid work.<sup>5</sup>

**3. Recommendation**

Professor Diane Elson has suggested a holistic 3Rs approach: Recognition, Reduction and Redistribution to confront the problems associated with unpaid domestic work. Recognizing the value of unpaid care work in the economy, Reducing the hard work and time by providing better infrastructure and redistributing the unpaid domestic work. Based on this 3Rs approach the subsequent recommendations were constructed.

**I. Working hours**

Homemakers do daily repeated work all day in a year without any prescribed working time and week off. "A wife or mother does not work by the clock. She is in constant attendance of the family throughout the day and night"<sup>6</sup>. Practically it is impossible to stipulate working hours because of the nature of this work which make them prone to exploitation. In a very recent case the Bombay high court said "if a married lady is asked to do household work definitely for the purpose of the family, it cannot be said that it is like a maid servant. If she had no wish to do her household activities, then she ought to have told it either prior to the marriage so that the bride-groom can rethink about the marriage itself or if it is after marriage, then such problem ought to have been sorted out earlier"<sup>7</sup>, Which again reinforces the gender norms.

To prevent women from being exploited, the policy makers must recognise unpaid work as work and consider making special provisions prescribing an adjudicating authority where women can proceed with when they are exploited.

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<sup>5</sup> "women are hungrier" UNWFP

<sup>6</sup> Arun Kumar Agrawal & Anr v. National Insurance Co. Ltd & Ors 22 July,2010

<sup>7</sup> Sarang Diwakar Amle & Ors. v. State of Maharashtra & Anr. 21 October, 2022

## II. Remuneration for homemakers

The first feminist movement demanding wages for homemakers was in 1972 by Italian activists. There are several countries that have given constitutional recognition for homemakers. Venezuela is the first country to constitutionally recognize the socioeconomic value of housework in 1999 Article 88 of the Venezuelan constitution states that “The State guarantees the equality and equitable treatment of men and women in the exercise of the right to work. The state recognizes work at home as an economic activity that creates added value and produces social welfare and wealth. Housewives are entitled to Social Security by law”.<sup>8</sup> Article 36 of Cambodian Constitution states that “the housewives in the home shall have the same value as what they can receive when working outside the home”.<sup>9</sup> Demanding remuneration is directly connected to recognising the unpaid domestic labour of the homemaker thus the absence of this remuneration makes them dependent on the family members for their basic needs and makes them more vulnerable however the argument against the demand for remuneration is this might further construe the patriarchal idea of men being a provider and give them the sense of entitlement towards the women's labour and another opposition is that the labour that women do at home cannot be possibly accounted. Further research shows that women do unpaid work in addition to paid work where they end up doing chunks of work which leads to double the burden for women so it is clear that economical independence alone is no help. It is important to recognize the value of unpaid domestic work but it should be accompanied with cultural change and behavioural change.

### Current status of India in compensating homemakers for their labour

#### a. UWCD Draft

In 2012 The Union Women and Child Development Ministry in India drafted a bill to compensate homemakers for their domestic labour where husbands must pay a certain percentage (between 10-20%) of their monthly income to their homemaker wives and this bill referred homemakers as “Home engineer’s”. Then Minister Krishna Tirath has said that this amount should not be looked upon as salary for housework rather it could be referred to as an

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<sup>8</sup> The Constitution of the Bolivarian Republic of Venezuela

<sup>9</sup> Constitution of Cambodia

honorarium. But this draft remains as a draft itself i.e. it was not passed by parliament

**b. Griha Aadhar Scheme**

Goa Government provides Rs.1500 per month which will be provided directly to the hands of housewives whose family's gross income is less than 300000 per annum. The scheme is introduced to provide financial assistance.

**c. Motor Vehicle Act, 1988**

Under this Act, the value of unpaid domestic work is evaluated over death person to provide compensation to their family members. Schedule 2 of the Act prescribed a notional income for a person who was not earning an income. Where in the case of a spouse Rs. 1/3rd. of the income of the earning surviving spouse but this provision seems to be troublesome where it undervalues the domestic works of the homemakers however In a case the SC Bench: N.V. Ramana, Surya Kant, Aniruddha Bose said that the value of a women's work at work was no less than that of office going husband,...there can be no fixed approach and court must look into the fact and circumstance while calculating the notional income of a homemaker.<sup>10</sup>

In India, There is no statutory provision that recognises the economic value of household works done by homemakers and also, the new 4 labour codes doesn't have any provisions regarding this unpaid domestic work. To recognise homemakers economic value Policy makers should make provisions in order to provide remuneration to homemakers.

**III. Inclusion of unpaid domestic work in GDP**

Gross domestic product means the total value of all the goods and services produced in a country. The criticism around this method of calculating GDP is, It completely excludes the unpaid labour performed by homemakers. Economist, Phyllis Deane, thinks that including unpaid labour in GDP produces an economic value of tasks done by homemakers. The inclusion of the economic value of unpaid work in GDP would recognize the benefit of unpaid domestic work brings to the economy, and recognise that the unpaid work directly enable the other family members to do paid work outside. Silvia Federici, a Marxist feminist argued that male economic production was

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<sup>10</sup> Kirti v. Oriental Insurance Co Ltd ( 2021 ) 2 SCC 166

impossible without women's uncompensated non-economic labour. but the challenge of including unpaid labour in a measure of GDP is unlike paid work unpaid domestic work does not involve any formal monetary transactions where no one makes or receives a payment. However, Feminist economist Marilyn Waring expressed her idea of including unpaid labour in national accounts by evaluating time in alternative to economic activity to calculate the value of labour.

#### **IV. Gender sensitizing programmes**

Gender inequality is a major cause of the suffering of unpaid domestic workers where the family members take their frustrations on homemakers. To reduce this kind of abuse policymakers must initiate gender sensitization programmes. Gender sensitizing means creating awareness among individuals to break the stereotypical behaviours of men and women this paves a way for egalitarian society. In a case consisting a bench of Dr DY Chandrachud and Vikram Nath, JJ has observed that it becomes necessary for the Government to adopt policies through which it produces substantive equality of opportunity It said "Women are subject to a patriarchal mind set that regards them as primary caregivers and homemakers and thus, they are burdened with an unequal share of family responsibilities" and also the bench enunciates that "Discrimination may result by an unconscious bias or a failure to recognize unequal impacts which are produced by the underlying societal structure" .<sup>11</sup>

#### **V. Representation of women in media**

Indian media often glorifies the unpaid labour of women where they happily play the role of the homemaker. This further reinforces the gender norms. In most Indian advertisements women do all the household chores and these ads devalue the physical struggle of women's unpaid labour. Indian media plays a vital role in influencing the individuals of the country. There is legislation called The Indecent Representation of Women Act, 1986 which prohibits the indecent representation of women through advertisements, publications, writings, paintings, figures or in any other manner. Likewise, Policymakers should consider making legislation that prohibits media that sanctifies womanhood and enhance gender disparity within the household.

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<sup>11</sup> SK Nausad Rahaman v. Union of India, 2022 SC 297

## **VI. Paternity leave**

Both mother and father are parents of a child but in the case of taking care of a child, it is seen as a role and responsibility of the mother alone. This is because of the strong cultural practices which make it essential for a female to do all the care work and this is often seen as unskilled work which makes this work more invisible. In India, women can opt for 26 weeks and prenatal leave for 8 weeks of maternity leave under the Maternity Benefit (Amendment) Act, 2017 whereas men can opt only for 15 days under Rule 43-A of Central Civil Services (Leave) Rules, 1972 similar leave rules are there in state leave rules too, but there is no paternity leave policy for employees in the private sector.

This leave gap between men and women further increases the burden of women in care work so legislatures should consider making independent statutes that provide sufficient paternity leave which paves the way for a better family structure.

## **4. Conclusion**

According to the above discussions, it is clear that unfair obligation falls on women due to the gender bias and this could only be tackled by the cultural change where every individual must take responsibility to protect unpaid domestic workers from the mental and physical abuse and this should be formulated by providing statutory recognition of unpaid domestic work as “work”.

“unpaid care work is the foundation of human experience”.<sup>12</sup>

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<sup>12</sup> UNICEF 2000