

# Women's Exclusion from Just Conditions of Work, and the Role of the State

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## 1. Just Conditions of Work for Women as a Public Good

In the India Exclusion Report 2013–14, we argued that decent work for all is an important public good and that it is the responsibility of the state to ensure equitable access of all persons to conditions of decent work. In this second Exclusion Report, we carry this argument further to underline that just conditions of work for women in particular, and not just of workers in general, is in itself a high-order public good.

We derive this view first from the *a priori* conviction that ensuring conditions in which women have equitable access to fairly remunerated, safe and dignified work, which is compatible with their aspirations and capabilities, is an absolute value in itself because of the intrinsic equal dignity and worth of women and men, and indeed of persons of other genders. Patriarchy, markets and the functioning of state laws, policies and institutions have created historically tall barriers to women's just access to work. These not only limit women's presence in what is considered the labour force, but severely impede and restrict the access of women and girls to fair conditions of work. We find empirically that these barriers continue to impede

women's just participation in work in contemporary times, as we will illustrate briefly in the case of India in this chapter.

There is no doubt that some men, especially men who bear disadvantages due to class, caste, religious and ethnic identities, and different abilities, also face barriers of access to decent, fair and non-exploitative work. However, as gender deepens and consolidates these hindrances, we felt the need to underline these impediments and investigate the situation that pertains today relating to just conditions of work for women, and the role of the state.

India's Constitution mandates the state to adopt measures of positive action in favour of women and equality of opportunity in public employment. Article 39 of the Directive Principles of State Policy requires that states ensure that 'citizens, men and women equally, have the right to an adequate means of livelihood' and 'there is equal pay for equal work for both men and women.'

The United Nations Declaration of Human Rights, 1948, was perhaps the first articulation in international covenants of the rights of women to work, in using the phrase, 'all human beings...' as opposed to 'all men', when during the discussion of the drafting committee delegates pointed out that

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the latter did not necessarily include women.<sup>1</sup> The Declaration did not define any differential rights for women. In 1951, the ILO adopted the Convention on Equal Remuneration, incorporating the principle of equal pay for men and women workers for work of equal value and calling for rates of remuneration to be established without discrimination based on sex.<sup>2</sup> Already in 1919, the year the ILO was founded, its first Maternity Protection Convention was adopted, entitling all women workers to maternity leave with cash and medical benefits.<sup>3</sup>

In 1967, the International Covenant on Economic, Social and Cultural Rights<sup>4</sup> explicitly laid down that women were to be treated as equal to men, with respect to standards of employment. Article 7 of the ICESCR states that ‘everyone’ has the right to enjoy just and favourable conditions of work, elaborated upon through the parameters of—fair remuneration, based on a minimum wage, which for women must be equal that paid to a male worker for the same work<sup>5</sup> and provide a decent standard of living for the employee and their families; a safe and healthy working environment where occupational accidents and disease (in realisation also of article 12 of the Covenant on the right to health) have been minimised and specific safeguards put in place to protect the safety and health concerns of women, for instance, during pregnancy; opportunities for advancement, based on considerations of seniority and competence and lastly, limitation of working hours to ensure time for rest, leisure and paid leave.

The strongest impetus to women’s rights came from the Convention on the Elimination of all forms of Discrimination against Women (CEDAW),<sup>6</sup> adopted in 1979 by the UN General Assembly, which is still known as an International Bill of Rights for women.<sup>7</sup> In using the concept of discrimination, the convention affirms, as Diane Otto argues, that *de jure* equality is not an adequate strategy to address the ‘institutionalized nature of women’s disadvantage and change the cultural, religious, social, traditional beliefs that

typecasts women as inferior to men.’<sup>8</sup> With respect to employment in particular, the convention recognises the right of women to the same employment opportunities and application of same criteria for selection in employment; equal remuneration and treatment in work of equal value; job security; opportunities for promotion and training; social security and the right to health and safety, including in reproductive functions.

The imperative to recognise unpaid care work has been also articulated in international frameworks, encouraging states to formulate inclusive and responsive policies. For instance, General Recommendation<sup>9</sup> 17<sup>10</sup> of CEDAW acknowledges that unremunerated domestic activities contribute to national development, and that states quantify and include these in the GNP. The ILO states that its ‘understanding of the term “work” includes unpaid work in the family and in the community’;<sup>11</sup> and its commitment to unpaid care work is reflected in ILO Convention no.156 on ‘Workers with Family Responsibilities.’<sup>12</sup> Sustainable Development Goals on gender equality asks that states ‘recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies, and the promotion of shared responsibility within the household and the family as is nationally appropriate.’<sup>13</sup>

There are also more utilitarian reasons for regarding just conditions of work for women to be a public good, because exclusion of women from such work also denies society the benefits of their contributions that would have been possible and considerable, had they been able to realise their full potential. There is also some evidence from studies from many parts of the world which indicate that diversity in the workplace also promotes higher productivity of all workers.<sup>14</sup> It is a prerequisite for the worker’s ability to sustain herself in employment and crucial in the enjoyment of other rights, for example, physical and mental health, by avoiding occupational accidents and disease, and an adequate standard of living through a fair remuneration.<sup>15</sup>

Women perform a variety of work, waged, non-waged, recognised and unrecognised. Of these, paid work has the greatest potential in terms of improving bargaining powers for women within the household, the ability to form social networks and the creation of assets.<sup>16</sup>

We recognise that the exclusions of women from just conditions of work are deeply rooted in the larger social context of patriarchy as also the direct consequence of the larger macro-economic context. However, as we have argued in the Introduction to this report, whereas we recognise that exclusion from public goods may and usually does arise from fundamental social and market exclusions, this report chooses to focus on the role of the state, because we believe it is the duty of a democratic state to prevent and correct social and market exclusions.

The state's role in ensuring the public good of just working conditions for women, must be in two distinct, inter-related spheres. First, in guaranteeing legal rights to women as workers in an employment relationship and extending the ambit of these guarantees to those women who work outside this relationship. In addition, for workers in the informal sector of the economy, and for those engaged in subsistence-level self-employment such as in farms, artisanal work, and in street-vending and rag-picking, where there is no clearly identifiable employer, the responsibility to ensure equitable social protection such as pensions and maternity benefits that are available to women in the formal sector, must rest squarely on the shoulders of the state.

## 2. Who is Excluded

There are very few women in any part of the world who are completely excluded from work itself. Women typically do more work than men, but much of this work is unremunerated, and often undervalued, unrecognised, unsafe and exploitative. In this section, we ask which women are excluded from just conditions of work.

Gender inequalities pervade different types of work across the world. As noted, women typically carry much higher burdens of unpaid work, especially unpaid care work, as compared to men. A greater proportion of women are typically concentrated in informal, precarious and low-end jobs, again compared to men. What distinguishes a woman's labour concerns, from that of a man, is that her ability to access work and just conditions of work is primarily determined by factors external to her own capabilities and income, and more by the social constructs within which she operates. In fact a woman's ability to work, especially for remunerated work outside her home, and her work choices, are often decided by her natal or partner's household members who wield decision-making power. The disparity between men and women's ability to bargain is evident in their highly unequal outcomes with respect to enjoyment of work under decent working conditions and their relative positions on the paid work-unpaid work continuum.

If we ask the question raised in this section—namely, who among women are excluded from just conditions of work—our conclusion would be the large majority of women, from every income decile and social category. But we will argue that exclusion is aggravated for certain groups of women, based on their social identity or due to the nature of the work they are engaged in, while recognising that the groups are not mutually exclusive. These are burdens carried by all women of every income decile, but more by women from excluded groups. The chapter focuses on women burdened by disadvantages of class, caste, religious and ethnic identities, and different abilities.

We find that there exists a whole range of dense, diverse and often overlapping categories of exclusion of women from just conditions of work. We start by speaking of the exclusions faced by women engaged in unpaid care-work mostly within the household, and also unremunerated work in family enterprises. The section goes on to underline the severe exclusions from just conditions of work

faced by women in bonded, semi-bonded, forced as well as illegal work of various kinds: work which is outlawed such as work by children, or socially degrading work linked to caste such as manual scavenging (most of which is undertaken by women). Excluded women workers are also those in other socially devalued and stigmatised professions like sex-work. Sex work is nominally not unlawful but still illegalised and even criminalised in practice. Another category of exclusion that we cover in this section is of women in unsafe and exploitatively remunerated conditions of work. This covers again a large and diverse segment of women's

work, and includes for instance work in brick kilns, construction and waste-picking, and also various kinds of factory and home-based work. We will also observe briefly that the burdens of unjust work are even higher for women who are burdened by social and economic disadvantages such as of class, caste and religious identity.

## 2.1 Unpaid workers

A majority of women, both in and out of the labour force engage in unpaid work, which, in a monetised economy, leaves them with multiple disadvantages.

**Table 1: Females with various possible employment statuses, 2011–12 (all ages)**

Usual principal activity status	Rural	Urban	Total
11 – Own account worker	2.9	2.8	2.8
12 – Employer	0.1	0.1	0.1
21 – Unpaid Family Worker	6.5	1.8	5.1
31 – Regular salaried Worker	1.3	6.1	2.7
41 – Casual Labour in Public Works	0.3	0.0	0.2
51 – Casual labour in other types of work	6.5	1.8	5.2
81 – Unemployed	0.5	0.9	0.6
91 – Attending educational institutions	25.1	26.0	25.4
92 – Attending domestic duties only	18.5	36.4	23.6
93 – Domestic duties + additional work	23.7	11.6	20.3
94 – Rentiers, pensioners , remittance recipients, etc.	0.9	1.5	1.1
95 – Not able to work due to disability	1.2	1.2	1.2
97 – Others (including begging, prostitution, etc.)	3.6	2.7	3.4
99 – Children of age 0-4 years	8.9	7.2	8.4
Total	100.0	100.0	100.0

\*Domestic duties refer to codes 92 and 93

\*\* Codes 11-81 refer to the labour force

Source: NSSO 2011–12

Unpaid work includes activities considered 'economic', i.e., production for the market, but also production or procurement of inputs and services for household consumption. While both of these are recognised in principle today in national accounts, they are hard to measure due to their social invisibility and the often unstructured engagement in them; for instance, they may be carried out in conjunction with other types of work, over short time-periods.<sup>17</sup> It is clear, however, that the participation of women in unpaid work is significantly higher than that of men, and women are also concentrated in unpaid work (see Table 1). Unpaid care, on the other hand, is often not considered 'economic'.

### 2.1.1 Unpaid care workers

Unpaid care work refers to the work done in the home and in communities, from the direct care of children, the ill and elderly and indirect care such as preparing food, cleaning, shopping and collecting water and fuel for the household. Far from being 'unproductive', it is necessary as it contributes to the development of children and maintenance of the labour force. Unpaid care workers subsidise businesses by providing services that would require the payment of a larger wage to workers to 'buy' care to maintain the same standard of living. They effectively also subsidise the state by providing health care, child care and filling gaps in infrastructure provisioning, for instance by travelling longer distances to fetch water and fuel.<sup>18</sup> While middle and high-income households with income and asset wealth are able to substitute or reduce their unpaid care work with paid domestic services and the purchase of market goods, problems of access to resources such as water, fuel and health care puts an additional burden on women from poor households, trapping them, in what Hirway refers to as 'income and time' poverty.<sup>19</sup>

Unpaid care work is highly unequally shared between women and men, to the detriment of the woman's ability to take up paid work or use time for leisure and self-development. Time allocation data

(available only through a pilot time-use survey<sup>20</sup> carried out in 1998–99), showed that Indian men's contribution to unpaid care was 10 per cent that of women, across income groups. Participation in unpaid care work is significantly higher for women, compared to men: according to the NSS 2011–12 data, approximately 43.8 per cent of women of all ages were engaged solely in domestic work,<sup>21</sup> while for men, participation was negligible. These figures do not cover women involved in market work, who nevertheless continue to perform unpaid care work, bearing a 'double burden'.

Norms governing the sexual division of labour within the household and the hierarchy of work place unpaid care work at the very bottom; it is intensive, often repetitive and full of drudgery, and does not carry with it monetary rewards, opportunities for mobility or exposure to social and political life outside the household and is therefore relegated to women.

Policy has largely ignored unpaid care workers. Care has entered policy only in relation to paid work, through laws mandating paid maternity leave and through schemes such as the Rajiv Gandhi National Creche Scheme for the Children of Working Women. The Integrated Child Development Scheme (meant to address nutrition, infant and maternal mortality) developed a nominal care function over time. However, here too the state relies on the underpaid labour of women, who, as a consequence of being hired as 'honorary workers', are not entitled to standard minimum wages, pensions or insurance.<sup>22</sup>

In itself, measuring the extent of unpaid care work in an economy and shifting responsibility for certain components of care work to the market or state would not mitigate its undervaluation or lead to equitable sharing between men and women. Making this work visible, would however, reveal links between the paid and unpaid economy and enable the formulation of realistic macro-economic policies. Better state provisioning would also provide time to women

from low-income households for education and skill-development, leading to better outcomes on the labour market.

### 2.1.2 Unpaid family workers

Unpaid workers in market work include those engaged within family enterprises (farms and businesses) owned by relatives living within the same household. They do not enjoy ownership and control rights over productive resources or capital (unlike self-employed or own-account workers) assisting the main worker, effectively as employees, but with no recognised employee rights and legal protection. Men are often accorded the status of 'owner' based on their position as the head of the household, while an unpaid family worker may be the main producer.

At present, it is difficult to estimate exactly how many are engaged in contributing family work as there appears to be a classification error between those contributing to the family's labour and those out of the workforce as a result of attending to domestic duties. According to 2011–12 NSSO estimates, 15.1 per cent of women between the age of 15–59 in rural areas are contributing family workers, relative to 6.6 per cent own-account workers. In urban areas, the share is only 3.5 per cent, relative to 5.1 per cent own-account workers—<sup>23</sup> the share of workers engaged only in domestic duties is a lot higher in urban areas, however. Available data suggests that women are shifting from waged employment to unpaid work, be it attending to domestic duties or contributing to family work.<sup>24</sup> Women are thus being pushed further down in the quality of employment hierarchy.

The large number of female unpaid family workers in the unorganised sector would clearly benefit from social security coverage; however, policy response in this regard has been paradoxical. They are not deemed beneficiaries under the Unorganised Workers Social Security

Act, though counted as part of the informal sector workforce,<sup>25</sup> effectively excluding them from individual-based security provisions of the Act such as pensions and life insurance. The exclusion ignores intra-household inequities in resource distribution and re-enforces the breadwinner-dependent dichotomy.

## 2.2 Forced inclusion in illegal occupations

Certain exploitative and coercive labour arrangements are illegal under the Constitution, central and state laws. Articles 23 and 24 of the Constitution prohibit trafficking in human beings, forced labour and child labour. The central government in accordance has enacted the Bonded Labour Abolition Act (1976), the Employment of Manual Scavengers Act<sup>26</sup> (1993), the Child Labour Prohibition and Regulation Act (1986) as well as schemes for their rescue and rehabilitation. Social oppression was and continues to be the basis of such labour arrangements; Scheduled Castes, Scheduled Tribes and in particular, women and children from these communities are most vulnerable, due to low ascriptive status, recognised rights and consequently their access to resources such as education,<sup>27,28</sup> or assets like land.

Estimating the number of individuals in these practices is difficult, given that they are concealed and official surveys under-report their prevalence. In addition, practices such as labour bondage<sup>29</sup> have transformed, making identification difficult. Inter-generational bondage is increasingly giving way to short-term disguised bondage, in which workers labour against an advance or deferred wages, or both, at very low and exploitative remuneration. Identifying women may be even harder in such contexts as they are rendered invisible to a greater degree due to the working arrangements. Studies conducted in Andhra Pradesh, Tamil Nadu and Chhatisgarh<sup>30</sup> found that women and children in *bidi*-making were employed by contractors with an advance, under the promise of being paid the

### Box 1: Girl Children in Labour: The Case of Sumangali

Tamil Nadu is one of India's most industrialised states. But its hidden face is the employment of several hundred thousand impoverished children and adolescents, mostly girls but also some boys, in conditions of months-long confinement and gruelling daily schedules of long hours of toil in the state's spinning mills. By employing what are called 'child camp coolies', their employers break many laws of the land with impunity, and damage tens and thousands of childhoods.

The state is the largest producer of cotton yarn in India and has emerged as a global sourcing hub for readymade garments. Tirupur district tops all hubs in terms of turnover (Rs 13,450 crore), with a total of 2,599 manufacturing units employing around 6 lakh workers, directly and indirectly.<sup>38</sup> More recent figures by SOMO and ICN estimate 4 lakh workers employed in some 1,600 spinning mills. Sixty per cent of the total labour force consists of women and girls.<sup>39</sup>

The tall walls of their factories, with often electrified barbed wire, serve not only to impound their young workers within their campuses, they also prevent public scrutiny of these factories by activists, unionists, journalists and researchers. But state officials are not prevented from entering these factories and enforcing the law. Their failure to do so makes them, and the political and administrative leadership of the state, gravely culpable in these many crimes against children.

Spinning mill owners invented *Sumangali*,<sup>40</sup> primarily to secure a steady labour supply of submissive adolescent female labourers. About two decades ago, with the help of contractors they started targeting young Dalit girls who had completed their basic education at the age of 14 years, and school drop-outs. 60 to 70% of the young women workers are Dalit.<sup>41</sup> Research carried out by SAVE between 2013 -15,<sup>42</sup> shows that 23% of all *Sumangali* workers were younger than 14 years of age and 26.85% of workers were between 12 and 14 years of age at the moment they were recruited, implying that a quarter of all workers are child labourers, in violation of, not only labour laws but also the right to free and compulsory education. During inspections, they are hidden in closets or closed rooms or doctors are brought in to certify that they are older than 14.<sup>43</sup>

They may join the mills due to their poor standing in the community, landlessness and lack of other assets, or discrimination in local schools limiting other livelihood options,<sup>44</sup> and about half of these girls are housed in dormitories or hostels managed by the mills. Although advertised as 'free' lodging and boarding, employers deduct these accommodation costs from wages without informing workers about the amounts.

The young women are offered a labour contract of 3 to 5 years. Upon completion, they receive a lump-sum payment which varies from Rs 35,000 to 70,000. Mill owners proclaim that the money could be used for dowry in the future, to attract parents, despite the fact that dowry is outlawed. During the contract period 'pocket money' is paid, rather than a regular wage. In reality, it is reported that the management discourages workers from completing their contracts towards the end of the contractual period, which would lead them to forfeit the lump-sum entitlement.<sup>45</sup> According to the SAVE study, while 90% of workers received the payment, 69% among them did not receive the entire promised amount.

Other malpractices include the depression of wages, by according workers ‘apprentice’ status on the one hand and compelling them to work overtime on the other. By law, apprentices cannot work overtime or be given incentives based on meeting production targets. In 2015, daily wages for eight hours of work were found to range between Rs 100 to 230, in contravention of the average minimum of Rs 282.40 set by the state in April 2015. Ninety per cent of the workers, however, worked more than 60 hours per week, with almost half working continuously for two shifts, without overtime payments. None of the interviewed workers reported paid leave wages, and 4% only had a weekly holiday. Mandatory breaks, of one hour daily for eight hours worked, were reported by 20% of the respondents.

Despite unhealthy working conditions, face masks and earplugs were seldom provided or used. Contrary to the advertised promise of ‘round the clock medical services’ a handful of workers reported free visits by medical doctors. Heavy penalties were levied for hours missed (Rs 50 to 60) making it difficult for workers to avail sick leave.

Verbal abuse and sexual harassment, including caste-based insults were reported by a majority of workers; sexual assault was reported by 6% of interviewees. No workers knew whether Workers Committees and Complaints Committees were established. Psychological trauma, resulting from these factors was reported by 65% workers. A fact-finding committee investigating the death of a young woman in a mill in Dindigul found that unions had no access to either factory or dormitory premises and none of the workers were affiliated to a trade union and speaking out against management was not tolerated.<sup>46</sup>

Sadly India’s law still permits employment of children above 14 years. Though the Factories Act limits the hours of work of these adolescents to four and a half hours a day, in every factory, these children are made to work at least eight hour shifts, with additional hours for cleaning and filling in for other workers during their food breaks. They work night shifts and are denied weekly leave, in violation of the law, and conditions of work are unhealthy for children in contravention of the standards laid down by the law. Their net wages are well below the statutory minimum wage levels.

Even more culpably, the three criteria used to define bonded labour apply to the employment of the children and adolescents. Employment is legally deemed to be ‘bonded labour’ if work is done against an advance or deferred wages, remuneration is below minimum wages, and there are restrictions to freedom of workers to leave employment if they so wish.

What spurs tacit official support for this unlawful form of employment is the contemporary favoured model of globalised economic growth, in which the current god is global competitiveness, valued at all costs, even above compliance with the law and the well-being of our children. India’s current aspirations to snatch from China the mantle of the ‘world’s factory’ depends ultimately on its capacity to guarantee an unlimited reserve army of cut-price and compliant workers.

*Sources:* Case studies provided by Coen Kompier and Harsh Mander

remainder at the end of the term of employment.<sup>31</sup> But as it is largely home-based, it tends to be disguised as self-employment. Research on the silk-weaving industry in Varanasi noted that though both girls and boys worked as weavers, the former were confined to the home and their work could not be documented.<sup>32</sup>

In cases where the whole family is bonded, as in brick kilns, the employment contract exists between the contractor and the male head of the household, while women (and children) are not listed on muster rolls.<sup>33</sup> This could result in non-recognition of bondage of women (and children) by the state and a subsequent withholding of benefits upon rescue.<sup>34</sup> It is also important to note that while men are aware of the terms of the employment contract, women may enter them as a consequence of their spouse's employment.<sup>35</sup> The marked asymmetry in power relations, due to caste, gender and economic bondage makes women workers extremely vulnerable to sexual exploitation by contractors, which is reported in almost every sector where bondage exists.<sup>36</sup>

A 2010 study on 2.6 lakh rehabilitated bonded labourers from Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh (over 43 per cent and 39 per cent were ST and SC, respectively and 16 per cent OBC) estimated that about 19 per cent of them were women,<sup>37</sup> indicating that a considerable number of women do find themselves in situations of bondage. However, numbers are likely higher, for reasons discussed above.

### 2.3 Women in stigmatised, unlawful, and illegalised occupations

Stigma is associated with 'unclean jobs', socially and culturally considered physically disgusting, morally offensive or undignified.<sup>47</sup> These jobs are often highly correlated with low-caste status and poverty as the marking of certain castes being ritually polluted (and consequent consigning of 'polluting' jobs to them), has been used as a strategy

by upper castes to control 'clean', economically profitable trades and education.<sup>48</sup> Control could be exercised either overtly, through threats, economic or social boycott and active blocking of movement into other trades, as illustrated below, in the case of manual scavengers or could be couched in ideas of ritual and tradition. The *Devadasi* practice, for instance (described in detail in this report in a later chapter), validated the sexual access of upper caste men to girls and women from lower castes, outside of a marital relationship.

In the forms of unlawful and socially degrading work,<sup>49</sup> one that especially burdens women and girls, is manual scavenging (as well as men and boys). This involves the, gathering of human excreta from individual or community dry toilets with bare hands, brooms or metal scrapers into wicker baskets or buckets, and then carrying this on their heads, shoulders or against their hips into dumping sites or water bodies. Others are similarly employed to clear, carry and dispose excreta from sewers, septic tanks, drains into which excreta flows, and railway lines.

In 1976, almost three decades after India secured freedom, Section 7A was introduced into the Protection of Civil Rights Act, 1955,<sup>50</sup> to make the offence punishable by imprisonment, compelling any person on grounds of untouchability to scavenge. It took another 17 years, in 1993, for Parliament to pass the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act,<sup>51</sup> which rendered even voluntary employment of manual scavengers for removing excreta an offence, and another four years for the act to be notified. The government also launched programmes for livelihood rehabilitation of freed manual scavengers and education of their children; and promoted flush latrines in place of dry latrines. However, these have not resulted in eradication, as governments have tended to look at this as an issue of sanitation rather than human dignity as guaranteed by Constitution. A much stronger law passed 20 years later the Prohibition of Employment as Manual Scavengers and Their

Rehabilitation Act, 2013,<sup>52</sup> has still not led to the end of the socially degrading practice.

While the practice of manual scavenging is easily identifiable, it persists despite legislation and civil society activism. Official estimates are based on self-identification or surveys that are limited to people hired to clean dry toilets, not those cleaning open defecation sites, public pour-flush toilets, healthcare facilities, sewers, septic tanks, drains, and railway tracks. In 2003, The Ministry of Social Empowerment and Justice reported that there were 6.76 lakh manual scavengers, but the Safai Karamchari Andolan estimates that the number is closer to 12 lakhs.<sup>53</sup> The problems with enumeration is that official agencies tend to deny the persistence of this outlawed practice, and in most places manual scavengers themselves do not speak out because of shame and fear of losing even this frequently insecure source of livelihood. Instead they remain trapped in a vicious cycle of intense stigma, segregation, poor health and education, destructive coping strategies like alcohol and drugs, all of which barred even more firmly options of other dignified vocations, which in any case are inaccessible by their birth in the most disadvantaged of all castes.

Civil society organisations working with manual scavengers, estimate that 95–98 per cent of individuals involved are women.<sup>54</sup> They belong to the most discriminated sub-castes such as of Valmikis, known regionally by different names—Bhangi, Chuhda, Mehtar, Madiga, Halalkhor, and Lalbegi, or the Muslim Hela sub-caste. They ‘inherit’ the work generation after generation, working for payments as low as a few rupees a month, daily rations of leftovers, old clothes, rights to use common/upper caste land for collection of free firewood, etc. Case studies indicate some degree of gender segregation in tasks and work arrangements, though it varies widely from state to state: in Gujarat, Rajasthan, and Uttar Pradesh, women clean dry toilets in households.<sup>55</sup> In Hyderabad, a study found that the Metro Supply

and Sewerage Board hired only men and another municipal agency paid lower wages to women in both permanent and temporary employment.<sup>56</sup> The community is coerced into continuing the work by the local *Panchayats*, by being prevented from taking up other occupations despite having the requisite qualifications, threats of violence or eviction from their home and village.<sup>57</sup> In case families serving the area move in to other work, *Panchayats* are even known to hire individuals of the Valmiki caste from other areas. The absence of alternative employment for most individuals in the community is a pressing problem, as illustrated in the following narratives.<sup>58</sup>

In affidavits to the Supreme Court in a petition filed by the Safai Karamchari Andolan in 2001, Ramrakhi, who has worked since she was 10, says, ‘The gas emitted by the shit has spoilt my eyes, and my hands and feet also swell. It sticks to my hands and makes me nauseous.’ Chinta Devi, like many others, says she hates this work, but has to pursue it to raise her children. Kokilaben, a sanitation worker in Kadi municipality in Mehsana, Gujarat, testifies in an affidavit to the Court, ‘The human excreta discharged by people on the road is collected by me in a large bowl with the help of a broom and tin plate and stored in a trolley. When the trolley is full, I drag (this with the help of) my daughter and my husband.... I carry the human excreta stored in plastic bucket on my head and while doing so the dirt falls on my body.... I fall sick frequently.... If I refuse to remove waste, I get suspended from duty by the Nagarpalika.’

Stigma can in some cases take the form of criminalisation of these workers by the state, as the case of sex workers illustrates. In 2010, based on information from state AIDS control societies, the Ministry of Health and Family Welfare estimated that there are almost 6.9 lakh registered female sex workers in the country<sup>59</sup>; actual numbers are likely to be much higher. Commercial sex work, unlike the work of women who are *Devadasis* or from the *Nat* community, is not initiated by their own community.

Sex workers may be forced to hide their occupation from their families and community. Their work exposes them to extreme physical violence and sexually transmitted diseases and erects barriers in access to housing and health care.<sup>60</sup>

Selling one's own sexual labour, while legal, is not recognised as work in India. The primary piece of legislation dealing with sex work, the Immoral Trafficking (Prevention) Act (1956),<sup>61</sup> conflates trafficking with sex work. Enacted to curb exploitation, it does not differentiate clearly between those consensually carrying out sex work and those coerced into prostitution. In fact, many women choose sex work, which may garner higher pay compared to other unskilled jobs,<sup>62,63</sup> and engage in it in addition to other work. Further, it illegalises brothels or establishments where sex work is carried out, leading to a *de facto* criminalising of sex workers.<sup>64</sup>

## 2.4 Women in hazardous occupations

Laws<sup>65</sup> protecting occupational health and safety in hazardous jobs or processes apply largely to formally registered enterprises, with a workforce above a specified minimum and prohibit the employment of women in certain sites such as underground mines, in processes such as cotton-opening, etc. Besides detracting from more effective workplace safety and health policies for all workers, these laws are unsuccessful in making workplaces safe for women. A 1996 World Bank report, in fact, noted that 'Indian women encounter health hazards in virtually all occupations',<sup>66</sup> including domestic work.

Home-based workers in such occupations, and their families, face a high degree of risk as the employer is absolved of the responsibility to maintain safety/hygiene standards or provide infrastructure. The *bidi* industry<sup>67</sup> is one such example; the government estimates that the industry employs about 45 lakh workers<sup>68</sup> a majority of whom are women, though

exact numbers are unavailable. An NCW Report<sup>69</sup> estimates that in some states, about 80 per cent of workers in the industry are women. It reported that most of them worked in cramped spaces, without amenities like toilets and clean drinking water. The inhalation of tobacco dust, increases susceptibility to respiratory ailments like Tuberculosis and Asthma; posture and long working hours lead to chronic back pain and rheumatic pain. Though the workers are eligible for Employees State Insurance, contractors seldom provide the requisite identity cards. Contrary to expectations that home-based work enables a balance of paid work with care, most women reported not having free time as a combination of a piece-rate system with low wages requires that they produce lakhs of *bidis* a month, requiring 8–10 hours of daily work on an average.

Industries known to be hazardous, like construction and mining employ women for intensely strenuous tasks such as head loading. A case study from Tamil Nadu, quoted in an NCW, 2005 report on construction illustrates their intensity: loads of mud or bricks can weigh between 15 to 20 kilos and have to be carried to male workers about 180 times a day over the course of eight hours,<sup>70</sup> making them vulnerable to musculoskeletal diseases, chronic fatigue and undernutrition. A majority are hired at a young age, under 40, owing to the taxing nature of work.<sup>71</sup> Labour laws are seldom implemented and organising is difficult as employment is transient. Pregnant and lactating women do not get maternity leave, neither do they have access to crèche facilities at worksites, putting their reproductive health and the safety of their children at risk.

## 2.5 Women facing multiple social and economic disadvantages

Marginalised groups in India, while being varied and internally heterogeneous, have been marginalised through instituted practices that are similar. Gender-based discrimination is heightened when it intersects with caste or

### Box 2: Women Subsistence and Unpaid Workers in Gujarat\*

Like the rest of the country, over two-thirds of all tribal agricultural landholders in the district are small or marginal farmers, owning less than two hectares of land. However, being rain-fed, agriculture is at best a seasonal activity. Since produce from land is hardly enough for household consumption even for four to six months in a year<sup>1</sup>, agriculture or agricultural labour in exchange for food grains provides at best a buffer against starvation. There are no consistent sources of wage labour, leading to distress migration.

Basic infrastructure for water, sanitation and subsidised cooking fuel are absent in Dahod. 84 per cent of the people have no water sources within their premises; 78.1 per cent have to depend on firewood for fuel. Women's unpaid work within the household therefore becomes more tedious, time-consuming and tiring.

During the agricultural season, women sow food grains for sustenance such as maize, pigeon peas and paddy, which are locally grown, labour-intensive crops. Women are engaged in the production of major grains and millets, land preparation, seed selection, sowing, applying manure, fertiliser and pesticide, weeding, transplanting, threshing, winnowing and harvesting as well as the collection of non-timber forest produce. However, their contribution is neither recognised nor compensated in subsistence production in family farms<sup>19??</sup> by the state or in farm production by the markets.

Almost all of the women in the study supplement agriculture with agricultural labour, wage labour, forest produce, distress migration or by community work that pays an honorarium. Wage and migratory work includes agriculture and forest work as well as high-risk labour such as construction, laying telephone lines, electricity transformers and railway tracks. Women and men migrate to Saurashtra for agriculture and to cities (Baroda, Ahmedabad and Rajkot) for construction. Women earn between Rs 150 and Rs 200, whereas men earn Rs 300 per day. Migration increases women's vulnerability economically as well as to physical or sexual violence.

A leader of the Devgadhi Mahila Sanghathan, a community-based organisation in the district articulates, 'Why will we migrate if we get enough from our own fields? If we have enough *saak-sabji* (greens and vegetables) to eat and to sell, we can live comfortably. But if we have to go to someone else's field for agricultural labour or somewhere outside the village for wage labour, we have to face dangers and risks. We don't have a decent place to live, and there is also the risk of violence and sexual assault. If women have a place to live, land to cultivate and enough water, they can live their lives independently with dignity.'

\* This case study, written by Sejal Dand and Sita Mamidipudi, is based on evidence collected from a larger study conducted by the Collective for the Advancement of Action on Women's Livelihood Rights (CAWL Rights) in Gujarat, Madhya Pradesh and Maharashtra. It is based on in-depth interviews with 15 women in Dahod who have claimed their rights to land and livelihoods from their families, non-tribals or the state upon dispossession.

religious disadvantages, although it must be highlighted that the experience of discrimination faced by women from each group is distinct. The combination of low household ownership of assets, such as land<sup>72</sup> and marketable skills means that women from these groups are pushed into low quality work in the unorganised sector, are most adversely affected by economic or job-market fluctuations.<sup>73</sup> Dalit, Tribal and Muslim women have the lowest levels of education among social and religious groups, even in comparison to men from the same groups. Data from the NSS 2009–10 shows that in rural areas, 58.1 per cent Dalit, 58.3 per cent ST and 52.6 per cent Muslim women were illiterate, compared to the average 43.9 per cent and only 1.1 per cent Dalit, 0.9 per cent tribal and 0.9 per cent Muslim women were graduates. In urban areas, while average proportion of graduate women was 14.7 per cent, only 7.2 per cent of Dalit women, 9.8 per cent of tribal women and 4.8 per cent of Muslim women were graduates.

Due to poverty and lower restrictions on mobility, the participation of Dalit and tribal women on the labour force has always been higher than that of upper caste and Muslim women, but, not surprisingly, casual wage work is the predominant source of paid employment for them. An analysis of NSS data from 2009–10 shows that over 31.5 per cent of Dalit women and 35.5 per cent of tribal women in urban areas were in casual labour, compared to 5.8 per cent of upper caste women. In rural areas as well, the proportion of upper caste women in casual labour was 19.4 per cent, compared to 56.3 per cent for Dalit women and 43.8 per cent for tribal women. Further, the highest decreases in labour force participation over the past decade have been for these groups in rural areas, which in the absence of an improvement in household wealth, is especially worrying.<sup>74</sup> Muslim women are concentrated in self-employment, in home-based sub-contracted work with low earnings.<sup>75</sup> While cultural restrictions on mobility may be partly responsible (as with upper caste

Hindu women), the claim needs to be examined in the context of the insecurity created by repeated episodes of targeted violence and everyday experiences of discrimination, which could potentially impact women's access to public life.<sup>76,77</sup>

In a patriarchal society, women who live by choice or circumstance independent of adult men, as single women, face particularly strong barriers to just work, as reflected in a subsequent chapter of this report devoted to single women. Another highly vulnerable category of women workers are women with disabilities, who are denied opportunities for dignified work both as women and as persons who are culturally seen to be 'without abilities'. Their limited access to education, health care, and aids to mobility, necessary for pursuing dignified labour are compounded by the social isolation and stigma they face. Their contributions to household labour also tend to be undervalued. Only 16.1 per cent of working age women with disabilities were employed in 2002, although just 29 per cent of the same group were recorded as being 'unable to work owing to disability'.<sup>78</sup>

Another major social barrier to access to just work is created by age. Unlike women in the working age, elderly men and women should see a declining need to participate in the workforce with economic growth and progress in social security coverage. On the contrary in India, they continue to work well past their retirement age. NSSO data shows that participation rates for rural elderly women have fluctuated around 20 per cent between 1983 and 2011–12.<sup>79</sup> While urban participation of elderly women has declined from historical levels, no such pattern is visible in rural areas. Far from the expectation that the elderly would be doing low intensity work, most of the elderly are working full-time, for more than four hours every day<sup>80</sup> while being paid lesser than younger workers for the same work.<sup>81</sup> If this work by aged persons is voluntary, then it can add to their sense of social and self-worth. But if work is forced by conditions of penury and the absence of social protection, their

high work intensity<sup>82</sup> is indicative of their economic insecurity.

This workforce of older women faces multiple vulnerabilities, both in their access to work and to adequate social security. Almost 70 per cent of all elderly workers and 93 per cent of all elderly women are either illiterate or have not completed primary education.<sup>83</sup> This elderly workforce is therefore primarily engaged in low-end, unskilled work, with elderly women more downwardly classified as compared to men—39 per cent of elderly women work in elementary occupations, as compared to 26 per cent elderly men<sup>84</sup> and receiving lower wages than men, regardless of whether they are engaged in regular or casual employment. In addition, the largely informal nature of India's labour market means that few workers manage to avail of employer's pension—only 3% of elderly women receive it and 15% elderly men.<sup>85</sup> With no control over resources, elderly women are also likely to face abuse in hands of family members. One in 10 elderly persons reportedly face some form of abuse after 60 years of age and, in the case of women, the perpetrators are usually family members.<sup>86</sup>

### 3. Processes of Exclusion

In looking for the causes of these exclusions, we recognise first that these stem most of all from the hegemonic social and cultural contexts of patriarchy, in which normative beliefs that privilege men over women result in their oppression and denial in work and the ownership of land and capital. There are also exclusions by markets, because the macro-economic context of neo-liberal globalisation has created a permissive framework in which women and girls are often preferred as workers because they can be paid less, denied more basic rights in the conditions of work, and are denied opportunities to organise themselves. We also find the state wanting, both in the design of its policies for the rights of women workers, but even more in the institutional bias

that plays out in the implementation of these laws and policies.

We shall consider each of these by turn in this section.

#### 3.1 Exclusion by patriarchy

Patriarchy is a social-political system that maintains the superiority of men over women.<sup>87</sup> The overarching context of enduring, indeed dominant cultures of patriarchy, denies women social and economic power both within and outside the family, denies them ownership and inheritance of economic assets like land, withholds from them political voice, regards them as subordinate to men in both domestic and work spaces, denies them equitable education and health care, and restricts them to domestic roles.

As Jacqui True argues in her influential work, 'The Political Economy of Violence Against Women',<sup>88</sup> the gendered household division of labour, supported by gender ideologies place the primary responsibility for unpaid work 'private realm' leading to unequal bargaining powers in the household. Care work on the labour market is shaped by this hierarchy and devalued, both within nations and transnationally, as women from poorer regions migrate to provide care services for families in the wealthier regions. True<sup>89</sup> points out that 'in a mutually constitutive way, the strict division of roles in the domestic sphere constrains women's public participation and their access to education and economic opportunities in the market, in turn creating hierarchal structures that entrap many women into potentially violent environments at home and at work. Some women, especially in the developed regions, evade patriarchal and potentially violent situations in the family/private sphere by contracting out caring work to poor women.' Further, it is evident that opening up of the economy has brought about a significant movement in the location, occupation and social position of women. It has expanded women's economic participation but it has left unchanged the

underlying patriarchal structures that perpetuate women's inequality with men and their susceptibility to violence. Despite the fact that women's labour is mobilized by the dynamic of globalisation, the majority of women workers in the informal economy, care sector and unpaid work lie outside the ambit of recognised labour standards and the human rights system.<sup>90</sup> They are stuck in 3D jobs—dirty, dangerous, and demeaning—often with a fourth D: degrading.

Kabeer<sup>91</sup> deploys the useful analytical constructs of 'gender-specific constraints' and 'bearers of gender' to understand structural constraints in relation to women in the labour market. 'Gender-specific constraints' refer to 'norms, customary beliefs and values that allocate certain roles to men and women based on ideals/models of masculinity and femininity, while also attributing a lower value to roles and labour deemed feminine'.<sup>92</sup> This would shape, for instance, the expectations that a community or society has of women in terms of the distribution of paid and unpaid work.

The sexual division of labour starts in the household, with women bearing primary responsibility for unpaid domestic work and care in most societies. Participation in paid work is, further, determined, by cultural restrictions for women from certain socio-economic backgrounds. Studies have documented that concerns about status restrict participation in work outside the home, for upper caste women.<sup>93</sup> On the other hand, although paid work is necessary for women from poorer households, their position in the social hierarchy may push them into other forms of culturally-determined work roles. Bardhan<sup>94</sup> and Mencher and Saradmoni<sup>95</sup> note, for instance, that in the rice-growing regions of Eastern and Southern India, the concentration of women, especially Dalit and Adivasi women is very high in wet cultivation of rice. Wet cultivation has traditionally been done by those at the lowest rung of the social hierarchy as it is considered polluting. Rice (wet) cultivation consist of ploughing, applying cow-dung, transplanting, weeding, fixing bunds (these activities are often

done in knee-deep mud and water), followed by harvesting, carrying it to the site of processing and processing. The work requires women to remain with their backs bent for hours at end, making them vulnerable to waterborne infections, mosquito and leech bites.

This is also a reminder that women are not a homogenous group; caste, religion, sexuality, class and other axes of stratification interact with gender to produce distinct forms of disadvantage for women as they engage with work. The market and state carry and reproduce these gendered ideologies through 'practices, processes and rules', to become 'bearers of gender'. Stereotypes about women, such as their 'natural' affinity for caring tasks, subservient temperament, inability to perform intellectual or physically taxing tasks, etc., are used as reasons to keep them in low-status and low-paid jobs.<sup>96</sup> On tea plantations in West Bengal, Assam, Tamil Nadu and Kerala, women are hired as tea-pluckers as they have 'nimble fingers' and then paid low wages as they are 'tire easily'.<sup>97</sup> Men seek employment in other work in the plantation that is better-paid, less intensive and require lesser hours, etc., like office staff, security guards, drivers, electricians, typists, pharmacists, teachers, supervisors, etc.

Constraints can be reproduced in formalised modes, through gender-blind and gender-unjust laws, for instance, as a forthcoming section shows. Further, they can be reproduced in routine processes that reinforce existing hierarchies. Labour statistics, for instance, under-report women's work as they may engage in several kinds of unpaid and paid work in a single day or week, effectively reinforcing the idea that women are not as 'productive' as men.

Also, given social and economic contexts, individuals and households may be making ostensibly rational choices that nonetheless have a greater disadvantageous effect on women, due to their vulnerability. The unavailability of decent employment for individuals with lower-than-graduate-level education may prompt families to educate boys rather than girls if returns from the

labour market are higher for the former. In turn, these act as feedback mechanisms, perpetuating lower access to resources and lower bargaining power for women.

### **3.2 Exclusion by macro-economic processes**

The barriers to women accessing just conditions of work erected by social and cultural contexts of patriarchy are further reinforced by the larger macro-economic context of neo-liberal policies. Jayati Ghosh reminds us of the fact that women are not excluded from the economy by neo-liberal policies, but are unjustly included. 'A basic feature of economic development in India,' she points out, 'has been exclusion of the bulk of the population: exclusion from control over assets; exclusion from the benefits of economic growth; exclusion from the impact of physical and social infrastructure expansion; exclusion from education and from income-generating opportunities; even exclusion from such basic needs as adequate nutrition. This exclusion has been along class, asset ownership and income lines, by geographical location, by caste and community and by gender. However, exclusion from benefits has not meant exclusion from the system—rather, those who are supposedly marginalized or excluded have been affected precisely because they have been incorporated into market systems. India thus has a process of exclusion through incorporation. This process of simultaneous incorporation and exclusion has been especially marked in the recent phase of rapid accumulation of capital over the past two decades, when the Indian economy has been viewed globally as "a success story."<sup>101</sup> In the contemporary neoliberal globalisation system, where the domestic policy environment has led to the expansion of women's employment, it has also led to the intensification of their workload in the market and at home. At the same time, neo-liberal policies have reduced the state's capacity to regulate and tax capital, resulting in an enforcement problem and difficulties in

generating expenditure for social provisioning that could alleviate women's poverty and vulnerability. Social provisioning of housing and child benefits which might provide better options for women are rarely on the political agenda.

As observed in a UN Women Report, 'At the global level, women's labour force participation rates (LFPR) have stagnated since the 1990s. Currently, only half of women are in the labour force compared to more than three quarters of men. Despite considerable regional variations, nowhere has this gender gap been eliminated. Nor have improvements in access to education closed the gender gap in pay. Globally, women earn on average 24 per cent less than men. The cumulative result of gender gaps in labour force participation, in earnings and in social transfers is substantial. A study of four countries estimates lifetime income gaps between women and men of between 31 and 75 per cent.'<sup>98</sup> Although macro-economic policy is generally considered to be gender-neutral, there are a number of ways in which it impacts women's work. Macro-economic policies affect not only the availability of paid employment but also the resources needed to implement social policies. The recent trend in women's workforce participation of a declining proportion of women in paid work or in work where they are counted as 'workers' are to a large extent a result of the macro-economic processes that India has been experiencing in the last three decades. Along with a neo-liberal economic framework, rigid gender norms result in women not being able to access decent employment. While these processes affect men as well, the underlying patriarchal norms result in an unfair or unequal impact on women.

Macro-economic policies therefore have an impact on women's work in a number of ways. The quantity and quality of work available as well as the sectoral distribution of work gets affected by macro-economics policies. Different sectors get affected in different ways and in turn there is an unequal effect on women as they are differently

concentrated across sectors. As mentioned earlier, macro-economic policies also affect the burden of unpaid care and domestic work via their impact on employment, household incomes and living standards. Demands on unpaid work may intensify during times of economic stress, increasing the burden on women. The UN Women Report on Progress of Women also talks about other ways in which macro-economic policies have a gendered impact. It mentions, for example, the distributive consequences—through taxation, for instance—that affect women and men differently which can either reinforce the extent of women's socio-economic disadvantage or, potentially, promote a redistribution of resources towards women. Another aspect which is also related to the burden of unpaid work on women is the influence the quantum of resources that are made available to governments to finance social policies and social protection programmes that can be used to reduce women's socio-economic disadvantage are often determined by prevailing macro-economic framework.

We can identify three processes which have led to women being excluded from equitable and decent work in India: (1) Processes leading to overall 'jobless growth' in the Indian economy; (2) greater flexibilisation and feminisation of labour and; (3) inadequate social protection policies and declining social sector investments that reduce the unpaid work burden on women and therefore free up their time making them available to participate in paid employment.

In India, high growth of around 8 per cent<sup>99</sup> per annum between 2003–4 and 2011–12, did not create commensurate employment, leading many analysts to term this period as one of 'jobless growth'. In fact, the employment elasticities of growth have declined over time. Employment elasticity fell from 0.44 during 2000–05 to 0.01 during 2005–10 though rising to 0.2 during 2010–12.<sup>100</sup> Aggregate rates of growth of employment in India have been very low with total employment having grown faster when the economy was growing more slowly.

Rural employment has been more affected than urban employment, with the number of workers in rural areas actually showing a decline in absolute numbers (a reduction of 35 million) and urban employment growing by only 2.5 per cent annual compound rate between 2004–05 and 2011–12.<sup>101</sup> Along with the new entrants in the workforce, the total employment generated by the non-farm sector was 49 million.<sup>102</sup>

Although there is an increase in non-farm employment, this has not been in high productivity and regular manufacturing jobs but mainly in the low productivity construction sector. Manufacturing actually saw a decline in its share of non-farm employment. Also, almost two-thirds of new non-farm jobs in rural areas were as casual daily wage workers, with no addition in regular employment.<sup>103</sup> Much of the decline in employment has been because of decline in female employment.

When women are 'pushed' into the labour market because of economic distress, they are often employed in precarious, informal and low-paid activities. When a crisis triggers women's withdrawal from paid employment, they return to dependent positions within the household with less autonomy and less access to incomes of their own. This is the phenomenon that has been seen in India as well where women's employment increased during the period between 1999–2000 and 2004–05, which has been attributed to distress<sup>104</sup> and later a decline in women's employment has been seen in the post-2004 period which has been at least partially attributed to the improvement in living standards in rural areas.

While female labour force participation rates in India have been historically low, it is still counter-intuitive that despite three decades of economic growth, these rates have not only not gone up but have in fact decreased in the last 10 years, with the decline being particularly sharp for rural women.

It is widely believed that the decline in women's work participation rates is because of an increasing

participation in education, which is to be welcomed. It is certainly true that female participation in education has increased in both rural and urban areas,<sup>105</sup> and especially so since 2007. However, it still does not explain fully the total decline in female labour force participation.

The decline in work participation has been among self-employed workers,<sup>106</sup> including (but not only) those involved in agriculture. One of the factors that has played a role in reducing the demand for women's work in agriculture has been the growing mechanisation in this sector. Further, due to environmental degradation and particularly a decline in access to forests and common property resources, there has been a fall in many of the rural activities earlier performed by women, such as the collection of minor forest produce. On the other hand, the increased time that now has to be spent in activities such as collecting fuel and water (because of declining availability and inadequate social services to provide these) has led to women spending more time on these unpaid activities at the cost of their ability to participate in the labour market.

These changes are also aided by existing social norms in society about the work that women can do. Therefore, roles such as driving a tractor or a harvester is seen as a man's job even though the labour these machines displace are primarily of women. Similarly it is the prevailing gender norms that result in the burden of unpaid work related to the household falling disproportionately on women. New jobs that are generated are in the low productivity services sector; here women are employed (home-based, etc.) because of gendered norms of employment.

Particularly in times of crisis, the effects of macro-economic policies on social hierarchies can become pronounced, which can intensify stigma, stereotypes and violence. The macro-economic framework within which other policies are implemented either enlarges or constrains their scope to advance substantive equality for women.

### **3.3 Exclusion through design and implementation of law**

Application of labour laws in India for enforcing workers' rights is the exception rather than the norm. The India Exclusion Report of 2013–14 shows how the State is gravely culpable in condoning and fuelling this culture of non-application of labour legislation.

This neglect by the state is even more acute for women workers. A brief analysis of various labour laws will show that labour laws in India do not cover the vast majority of working women because they are engaged in informal working arrangements. The 2008 Unorganised Workers Social Security Act, while in some ways a positive attempt to correct this, excludes unpaid family workers without a sound rationale, neglecting that household-based social security does not ensure fair intra-household resource allocation between men and women. In addition, the laws do not address women's concerns in work adequately, even in the organised sector, where they are applicable.

In this section, we will examine a few major labour laws from the perspective of women workers' rights.

#### **3.3.1 Factories Act, 1948**

One of the oldest labour legislations, the Factories Act lays down the necessary conditions of work to be ensured by an employer in manufacturing units. In the absence of any umbrella legislation on occupational health and safety (OSH) (other than those specific to certain sectors like mining and ports), it is the only set of OSH standards. The Act excludes home-based workers, sub-contracting and self-employed women by defining the factory in terms of the number of people employed.<sup>107</sup> In addition to working condition provisions directed at all workers like working time, payment of overtime wages, holidays and facilities, the Act addresses women specifically in protective provisions related

to separate toilets, crèches, night work restrictions and additional safety measures.<sup>108</sup>

This protectionist stance towards women results in clubbing them with other vulnerable categories; for instance, in regulations regarding the operation of machinery in motion women are clubbed together with young persons,<sup>109</sup> presupposing that gender renders women incapable of dealing with machinery in motion. The proposed amendments in the 2014 Factories (Amendment) Bill<sup>110</sup> seek to limit the restriction to specific groups, such as pregnant women and adolescents. Nevertheless, this approach separating women workers from categories of vulnerable workers is not maintained on the use of dangerous machinery. The unjustified blanket restriction against women continues to hold under Section 87. The proposed amendments are inconsistent, and safeguards should be put in place for all workers, irrespective of sex.<sup>111</sup> The Factories Act contains a provision for the instating of committees to decide on health and safety safeguards, in units using hazardous substances. Participation of women on these committees would allow them greater choice in the matter of engaging in 'unsafe operations'. However, it does not mandate that women be part of the committee, constituted of representatives from workers and management.<sup>112</sup>

Contrary to promoting shared care work between men and women, the Factories Act makes women workers responsible for child care including washing, changing their clothes and feeding, and stipulates that crèches are mandatory only in factories with 30 or more women workers.<sup>113</sup> Several trade unions,<sup>114</sup> as well as the National Commission of Women suggest an amendment removing references to 'women' workers specifically.<sup>115</sup> This would be in line with an ILO Convention dealing with workers with family responsibilities.<sup>116</sup> While the implementation of the provisions of the Act overall remains poor, employers frequently evade providing for child care<sup>117</sup> through strategies such as under-reporting the number of female workers in the muster roll of the factory.<sup>118</sup>

One of the most controversial provisions bars women from working except between 6 am and 7 pm, also mandated by the ILO Convention No. 89 from 1948, putting a blanket prohibition on night work for women. India ratified this convention in 1950. By a 1976 amendment, state governments were given the power to remove this restriction by official notification, provided that such variations do not authorise women to work between 10 pm to 5 am. The prohibitions obviously resulted in a decrease in employment of women workers.<sup>119</sup>

In 1990 the ILO adopted two new instruments on night work doing away with the blanket ban but still ensuring that working at night for women remained safe. In its Night Work Convention No. 171,<sup>120</sup> it provided for a special compensation and regulation for men and women alike in night shifts. Several High Courts have struck it down as unconstitutional and discriminatory, violating Articles 14, 15 and 16 of the Constitution. The Madras High Court in *Vasanth R. v Union of India*<sup>121</sup> and the Andhra Pradesh High Court in *Triveni KS v Union of India*<sup>122</sup> also stipulated guidelines to ensure the safety and welfare of women workers in night shifts.

The other ILO 1990 night work instrument, a Protocol amending Convention No. 89, was ratified by India in November 2003. It implied the same consequences, no longer a prohibition of night work for women as long as the safety of women workers could be guaranteed. This ratification prompted the need to amend Section 66 of the Factories Act.<sup>123</sup> In the face of demands for gender parity, in 2014, the Government of India permitted state governments to lift the ban and allow night work for women as long as transport is provided from a women worker's homestead to her workplace. In addition, workplace facilities such as separate toilets must enhance women's options to work at night, provided the consent of women workers, workers, employers, the representative organisation of the employers and the representative organisation of the workers of the concerned factory has been taken. The amendment

was expected to benefit workers in SEZs, and sectors like IT, garments, textiles and handicrafts.<sup>124</sup>

The removal of the ban without instating regulations and safeguards is naturally detrimental to the health and overall welfare of women workers.<sup>125</sup> In fact, night work could have detrimental medical effects if performed regularly, for both men and women. Further, it could add to the time-poverty experienced by women in low-paid jobs, who cannot afford private household help or work in multiple jobs.<sup>126</sup>

### 3.3.2 Equal Remuneration Act, 1976

Enacted to implement Article 39(d) of the Indian Constitution and the 1951 ILO Convention No. 100 on Equal Remuneration,<sup>127</sup> this Act postulates the principle of payment of equal remuneration to both men and women for performing work of a similar nature'. By a further amendment in 1987, discrimination against women during 'any condition of service subsequent to recruitment, such as promotion, training or transfer' was prohibited.

The Act has been criticised for using the phrase 'equal work of a similar nature' rather than 'work of equal value', the principle used in ILO Convention No. 100. This could encourage employers to classify jobs for women of inferior nature, justifying a lower wage. The ILO's Committee of Experts<sup>128</sup> recommends the development of objective and neutral job evaluation systems to 'avoid prejudices or stereotypes based on sex'.<sup>129</sup>

Courts have frequently ruled in favour of women, upholding the seniority of female staff, for example in the India Forest Service<sup>130</sup> and in airlines.<sup>131</sup> In *Mackinnon Mackenzie & Co. Ltd. V Audrey D' Costa* 1987,<sup>132</sup> where a woman stenographer filed a case for wage arrears in lieu of being paid a lower salary than male stenographers on the pretext that she was a 'confidential stenographer', the court emphasised that work should be evaluated based on whether

*real* differences exist in the '...duties actually performed, not those theoretically possible'.<sup>133</sup> In *Democratic Rights & others v Union of India*,<sup>134</sup> discrimination in payments of construction workers on the basis of sex was held to be a violation of Article 14 of the Indian Constitution.

Lower wages and barriers to promotion persist even in formal employment; women's average earned income (PPP) is US\$1,304, whereas men's earnings are US\$4,102 and they occupy only 3 per cent of senior and management positions.<sup>135</sup>

### 3.3.3 Industrial Disputes Act, 1947

This Act seeks to make provisions for the investigation and settlement of industrial disputes, and safeguards workers' rights against arbitrary dismissal from service. The Act was amended in 2010, and even this version speaks about 'workmen', proof of its archaic gender setting. Only a single provision mentions the word 'woman', on the Grievance Settlement Authority and its possible membership of women representatives.

Several landmark judgements have broadened the meaning of the term 'industry'<sup>136</sup> to include institutions such as hospitals,<sup>137</sup> and have established criteria for the determination of whether a workplace is an industry or not.<sup>138</sup> However, the restriction of applicability to industries employing as high as 50 or 100 workers, means that it does not apply to the large proportion of the country's workforce in the unorganised sector where workers have no assurance of labour law protection.<sup>139</sup>

### 3.3.4 Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013

In 1993 India ratified the 1979 United Nations Convention to Eliminate all forms of Discrimination Against Women (CEDAW), which paved the way for the landmark 1997 Supreme Court judgement

of *Vishakha & others v State of Rajasthan*.<sup>140</sup> The case resulted from a Public Interest Litigation (PIL) regarding Bhanwari Devi, a social activist who was brutally gangraped for opposing child marriage in her village. Invoking CEDAW for its justification, the Supreme Court mandated the government to establish sexual harassment legislation.<sup>141</sup> The court also came up with specific guidelines which made it compulsory for employers to set up internal sexual harassment complaint committee. The case of *Medha Kotwal Lele and others v Union of India (2013)*<sup>142</sup> extended the obligation to nursing homes, and to law, architecture and engineering firms.

A 2010 survey brought out that an overwhelming 88 per cent of women working in information technology (IT) and business process outsourcing (BPO)/knowledge process outsourcing (KPO) companies had suffered some form of workplace sexual harassment. It showed a paucity of trained personnel to implement the policies and handle cases of workplace sexual harassment (Sharma 2010).<sup>143</sup> Surveys conducted by organisations across India over the years have revealed that employers either choose to ignore the guidelines or not take them seriously.<sup>144</sup> Sexual harassment at the workplace remains the most under-reported form of gender discrimination<sup>145</sup> and the private sector has been very reluctant to acknowledge its existence.

It took the State of India 15 years after *Vishakha* to enact the Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013. However, the Act is seen by many as a watered-down version of the *Vishakha* Guidelines. The definition does not include, for instance, students in educational institutions, who while not being workers, frequently suffer coercive sexual harassment on campus or otherwise. This concern was also voiced by the Justice Verma Committee.<sup>146</sup> The most controversial provision of the Act is Section 14 which punishes a 'false or malicious complaint'. To premise an Act on the assumption that women are potential liars about their human rights abuses reflects stereotyping of women and for that reason

would be constitutionally untenable,<sup>147</sup> and further discourages women from filing complaints. The Act vests too much power in the hands of the employer and the district officer without an appropriate accountability mechanism.

Another critique of the Act as raised by several theorists is its skewed premise in attempting to reach a 'conciliation' at the first instance, as laid down in Section 10 of the Act. This approach negates the criminal nature of the perpetrator's acts as well as the devastating effect of sexual harassment for women employment opportunities. Not to mention the stigma, violence, powerlessness and character assassination forced upon women workers.

The field experience of the New Trade Union Initiative (NTUI) in the garment industries of Haryana shows that most of the Local and Internal Complaints Committees had either not been set up or were dysfunctional until the filing of RTIs asking for details of these committees.<sup>148</sup> Moreover, the external member of the Internal Complaints Committee, as stipulated in the Act, should be a member of an NGO committed to the cause of women or a person familiar with the issue of sexual harassment; in the best of situations, this is a vague definition. There is also the need to ensure that members of these committees are trained in basic issues regarding sexual harassment such as confidentiality and non-conflict of interests, which are often seen to be flouted.

Poor implementation of the Act and the laxity with which it is being dealt with by the authorities raises serious doubts regarding its effectiveness. In 2014, 526 cases of sexual harassment were reported by the Ministry for Women and Child Development.<sup>149</sup>

With a new government in power it turns out that this trend is independent from political parties representing the State. In its flagship NREGA programme of which women workers are a major recipient, the previous government did set minimum wage levels below the statutory

minimum wage requirements, undermining its own rule of law. The current government does not fare any better. On the one hand, it is betting on employment creation by making labour laws more flexible and their monitoring a voluntary undertaking, fully aware of the fact that maximum flexibility had already been achieved through a total disregard for labour law application, overseen by a defunct labour inspectorate. On the other hand, policy intentions like the illegal NREGA wage levels continue. One such example of taking the law for a ride is given by Finance and Corporate Affairs Minister Arun Jaitley. Under the 2013 Sexual Harassment Act, companies are obliged to set up Internal Complaints Committees investigating sexual harassment complaints. Their functioning must be disclosed in a yearly report. The Women and Child Development Minister Menaka Gandhi suggested making it mandatory for companies to reveal whether they had appointed Internal Complaint Committees under the 2013 Companies Act. Minister Jaitley however deemed this unnecessary, stating that industry representatives were against 'enhanced disclosures under the Companies Act, and adding to these may not be desirable'.<sup>150</sup> In another development, Menaka Gandhi, in the Indian Labour Conference of 2013 promised coverage under ESI (health insurance) and EPF (pension) for unorganised women workers in education and health services delivery like ASHAs and Anganwadi workers.<sup>151</sup> The subsequent session of the Indian Labour Conference shut down this intention,<sup>152</sup> withholding dues to thousands of working women on the basis of a simple technicality. Under such an insecure and uncertain labour law regime, the exclusion of working women from just and favourable conditions of work is likely to be the only rule in force.

### **3.5.5 Criminalising women's work: the example of sex work<sup>153</sup>**

Collectives of women sex workers, speaking for an

estimated 3 million-strong workforce, are emerging slowly from the shadows across India. We met sex worker representatives in Chennai, Delhi and Kolkata, and encountered everywhere women of substance, filled with a newfound and hard-won confidence as they battle stigma, violence, criminalisation and citizenship denials that routinely plague their difficult lives. 'We are women first, and sex workers only after that', they said to us. 'We want you to recognise sex work as work. Instead of viewing us through the lens of social morality, we wish you would see us for what we are. Many of us are single women workers, supporting our children and old parents. We are informal, unprotected women workers. Why should you and the police treat us as criminals?'

Their biggest complaint is against the law which regulates sex work in India today: the Immoral Traffic (Prevention) Act (ITPA), 1956. This does not criminalise sex work *per se*, but, as the Lawyers' Collective which works for sex workers' rights points out, it results in '*de facto* criminalisation through prohibition of soliciting, brothel and street work', and this 'has effectively undermined sex workers' ability to claim protection of law'. The law is defended as being necessary to prevent trafficking and child prostitution. But there should be specific robust laws to curb these evils, and not the deployment of a statute which is widely misused to harass adult women who voluntarily pursue this profession.

The law, to begin with, prohibits brothels, or declares premises shared by sex workers illegal, including their residences. Often sex workers are evicted from the only shelter they have with their children in the name of 'closing down brothels'. The law also punishes adults who live off the earnings of sex workers. In all the consultations I attended, women complained that this criminalises even their children as soon as they cross the age of 18, and old parents and younger siblings who many sex workers support.

However, sex workers are beaten down the most by Section 8 of ITPA which punishes soliciting, or drawing the attention of potential customers from a visible, conspicuous site, whether in a street or private dwelling. As the Lawyers' Collective explains: 'The criminalisation of soliciting is one of the most obvious legal problems for sex workers.... Sex workers are arrested even when they're not soliciting. Most plead guilty finding themselves in a vicious cycle of criminalisation.'

This law also arms the police with wide powers to search and raid premises suspected of serving as brothels. The raid by Delhi's Law Minister Somnath Bharti in 2014 on the homes of some African women in the South Delhi enclave Khirki was an unusual example of police restraint, but the Minister angrily demanded that the police raid the women's apartments nonetheless. Somnath Bharti is a lawyer by training, but he seemed unaware that even if sex work were indeed under way, it is not barred by law. Magistrates are authorised to order arrests and removal, close down brothels and evict sex workers, and involuntarily house them in official rescue and rehabilitation homes which are most often low-resourced, undignified and violent spaces, where they are forcefully and abruptly separated from their children.

Sex workers want this law which unjustly criminalises their work and exposes them to violence from police and sometimes vigilante groups to be repealed. They also seek the basic rights of citizens and workers. Most citizenship entitlements bypass sex workers, except sometimes in ironical ways. Paradoxically, the fear of the spread of HIV/AIDS led governments to open health clinics in red-light areas. But sex workers point out that these clinics only offer treatment for sexually transmitted diseases. 'Are we not women, and human beings? Do we not contract other illnesses which also should be treated? But the government only wants to treat us for sexually transmitted diseases, not for our sake, but for the sake of protecting the rest of society!'

Many sex workers spoke to us of their difficulties in getting their children admission in schools, because the school form has a column requiring them to indicate the child's father's name. They do not want to have to acknowledge their profession to school authorities in order to protect their children from the accompanying stigma. Indeed, many children themselves are unaware what work their mothers do to earn a living, unless their mother works from a brothel. A long overdue reform is that school forms across the country should require only the child's mother's name. What brothel-based sex workers want most for their children are special night-care child centres where the children can sleep protected during their mothers' work hours. As the children grow older, admission in residential schools would enable them to pursue further education.

#### 4. Consequences of Exclusion

We have found that the consequences of these hydra-headed forms of exclusion of women from just conditions of work are also multiple and profound. The non-recognition and devaluation of women's care work renders women at a further disadvantage when they enter the remunerated workforce. It also subjects them to double burdens of exclusion, unfairly and disproportionately burdened in both care work and remunerated work. It further deprives or inhibits women from accessing other public goods, such as health care, education and training, self-fulfilment and self-actualisation, and power in domestic, work and community spheres.

Drawing on the work of Chen et al.,<sup>154</sup> consequences on work for women can be understood, broadly, as follows. First, informal employment, with lower likelihood of stability, earnings and legal protection accounts for a relatively larger share of female than male employment. As an NCEUS report from 2009 estimated, 91 per cent of women are in informal jobs

without contracts or legal protection, compared to 86 per cent of men. Women are also typically represented in segments with lower earnings. NSS findings from the 68<sup>th</sup> round estimated that on an average, daily wages from regular salaried work were twice the wage-amount from casual wage labour in rural areas and almost three times the amount in urban areas<sup>99</sup> and the same report states that only 5.6 per cent of women on the labour force in rural areas were in regular employment, compared to 10 per cent men.<sup>156</sup> In urban areas, data shows that regular waged work has seen an increase, but official and independent research suggests also that this is mainly attributable to a rise in numbers in the highly feminised sector of paid domestic workers.<sup>157</sup>

Analysis of NSS data over several years also shows that the persistent trend in women's self-employment is their concentration in unpaid work in rural and urban areas,<sup>158,159</sup> perpetuating financial dependence on the head of the household.

Second, within employment statuses, women's earnings are lower than men's. This occurs, in part at least due to the segregation of women in jobs that are deemed relatively unskilled and of low value, which therefore garner lower wages. In construction, for instance, they are largely engaged in manual jobs,<sup>160</sup> carrying cement, bricks and concrete to skilled male workers and are not trained or upgraded from these positions, despite years of experience. In agriculture, similarly, transplanting and weeding, which are women-dominated tasks, do not have fixed minimum wages unlike ploughing and harvesting, which are the domain of men.<sup>161</sup> Further, female wages for casual work across operations are 20–50 per cent lower than male wages.<sup>162</sup> This 'vertical segregation' manifests also in health, where care roles are overwhelmingly carried out by women, as nurses and midwives, while men form a greater proportion of physicians and in the rural education sector, where women are concentrated in pre-primary education and men in higher education.<sup>163</sup> In addition, as Ghosh,<sup>164</sup> points

out, 'Gender-based differences in labour markets and the social attitudes towards women's paid and unpaid work are also reflections of the broader tendency to keep wages low. The widespread perception that work is an addition to household income and thus commands a much lower reservation wage<sup>165</sup> is common to both private and public employers.'

Third, unpaid care work limits time available for paid work. While it is possible to choose to perform unpaid work for the household, evidence suggests that in fact this does not hold for many women workers. Based on an analysis of NSS statistics over several years, Maitreyi Bordia Das<sup>166</sup> points out that 92 per cent of the women primarily doing unpaid work<sup>167</sup> reported doing these activities out of compulsion, due to the unavailability of other family members, social and religious constraints, or the inability to afford hired help. About two-thirds cited the absence of others to share responsibilities as the primary cause.

It is interesting to note that, a third of the women engaged only in unpaid work for the household also expressed willingness to engage in paid work despite the intensity of unpaid work for the household (which includes not only cooking, cleaning and care of people, but also the production or free collection of goods for household use). Of these women, 70 per cent stated that they would prefer part-time work.<sup>168,169</sup> This preference could indicate (in addition to economic compulsion) that women feel unable to shed themselves of responsibility of certain unpaid work duties but aspire to balance these with limited participation in paid work roles. Constraints on time can therefore lead to further segmentation of the labour market, impelling women to take on work that offers flexibility, such as paid domestic work and home-based work. Additionally, in an unequal labour market, where returns to labour for women are much lower, working on agricultural or non-agricultural subsistence activities represents a rational choice for women as it helps increase the household income.<sup>170</sup>

The result of concentration in low-value and precarious employment on the one hand and the inability to redistribute domestic responsibilities, is an intensification of the totality of women's work.

The Time Use Survey carried out in 1998–99, showed that on an average, women's participation in productive work was higher than for men. Extremely poor, poor and even non-poor women spent between 8–10 hours more on work, compared to men from the same households.<sup>171</sup> Time for rest and leisure is therefore, limited; women's leisure time is more likely to be fragmented and secondary, i.e., broken up into shorter periods and often conducted simultaneously with other activities, such as cooking, neither of which allows complete 'immersion'.<sup>172</sup>

The intensification of work can be the result of speeding-up of production processes to keep pace with demand, facilitated in factories by mechanisation and assembly line production. A study involving 134 workers from garment manufacturing factories in Bangalore,<sup>173</sup> of whom three-quarters of line employees were women, concluded that a rise in exports led to greater flexibility of work contract and an increase in workload. There was little reported difference between permanent and temporary employees as both could be dismissed without notice. Having to work 10 hours rather than the normative eight, without overtime, was frequently reported. Management also deducted wages for each Sunday when workers rested. Employment thus structured neither accommodates the unpaid care work families have to undertake, nor are they adequately remunerated to enable the purchase of care services.

At times, responsibilities carried out by men can shift to women, increasing their load of paid and unpaid work as well as leading to a diversification of tasks. In recent years, agricultural distress, stagnation of real wages, mechanisation and job generation in the urban areas (of a kind) have

resulted in steady and increasing migration out of rural areas in search of non-farm livelihoods. However, this has followed a gendered pattern as men have largely been the ones to migrate (due to several factors: the lack of availability of jobs and lower wages for women, socio-cultural norms and costs of migration). In Bihar, a study found that the groups of women, from different communities and class backgrounds reported having to perform both, farm work as labourers or sharecroppers and take care of animals, or take complete responsibility of hiring and overseeing the work of agricultural labourers on family farms, after men migrated, in addition to childcare. This applied to marginal or subsistence workers who engaged in their community's traditional occupation. Women from the Dhobi community had to take responsibility for delivering clothes to clients, besides washing and ironing. Mallah women worked in multiple jobs, making and selling snacks, bananas, processed flour, etc., in markets or as vendors.<sup>174</sup>

The lack of decent work, combined with unpaid work burdens means ultimately that poor women have fewer options in terms of responding to and moving out of poverty, which results not only from the absence of or inadequacy of income, but also from a dearth of social security.

## Recommendations

While we recognise that just conditions in work for women would require the battling and dismantling of patriarchy, as well as the neo-liberal framework of the globally dominant economic model, our recommendations focus on the role of the state, or national and state governments, to ensure justice to women as workers.

We call for the state first to recognise and measure unpaid care work, and to accord it the value that is due to it. We also call for the state to share women's burdens of care-work, such as by establishing crèches and day-care centres for

children and the aged, and supporting professional home-based care of the ailing aged.

We call for an extensive review and reform of labour laws with a much clearer recognition of the fact that women constitute about half the workforce. They should be permitted to undertake night work, under safe conditions of work and transport. Work outsourced as home-based work should also entail the same responsibilities for safety, health, minimum wages, social security and overtime payments as for factory-based work.

We would like to see the ban on child labour to extend also to adolescent children until they have attained their required education levels, and the recognition that culturally sanctioned practices such as caste-based sex work are actually forced labour in unacceptable forms of work. We call for a much stronger enforcement mechanism for laws that ensure justice and safety of women in work, such as those against sexual harassment in the workplace,

against forced and bonded work and child labour, for equal remuneration and conditions in the workplace, the comprehensive decriminalisation of sex work voluntarily undertaken by consenting adults, even as sex work by children and trafficking are more effectively halted; and the ending of undignified and illegal vocations such as manual scavenging.

We call for a much stronger framework of social protection, which is individual based, and therefore accessible to women workers. We call for a strengthening of the legal safeguards underlying the MGNREGA to ensure that it is actually demand-driven, and women are able to secure work for at least 100 days a year and receive timely wage payments. And finally, beyond the chosen scope of this chapter (we propose to devote the next India Exclusion Report to this) we also recommend stronger rights of inheritance for women, and promoting their ownership of land and capital.

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## Endnotes

1. Devaki Jain (2005), 'Women, Development and the UN: A Sixty Year Old Quest for Justice,' Bloomington: Indiana University Press, p. 20
2. ILO Equal Remuneration Convention, 1951 (No. 100) was ratified by India in 1958. Out of 186 ILO member states, 171 countries have ratified this Convention. See: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100)
3. Maternity Protection Convention, 1919 (No. 3). This Convention was revised twice. First in 1952 by the Maternity Protection Convention (Revised), (No. 103) and in 2000 by the Maternity Protection Convention, (No. 183), the latter covering all employed women, including those in atypical forms of dependent work. India did not ratify any of these conventions. See: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C183](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183)
4. For details of the Convention, see: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
5. The ICESCR actually uses the narrower concept of 'equal pay for equal work', rather than recognising the value of work performed based on the effort and skills required. Draft General Comments on Article 7 state that national governments should try to determine objective criteria for valuation progressively and implement equality in pay for equal work immediately.
6. For the Convention, see: <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>
7. Ratified by India in 1993.
8. Quoted in Devaki Jain, (2005), *Women, Development and the UN*, p. 88
9. General Comments provide orientation for the implementation of human rights, with criteria for evaluating the progress of states in their implementation of these rights, but are not legally enforceable.
10. <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

11. See, for instance, ILO (2009), 'Gender Equality at the Heart of Decent Work' International Labour Conference, 98th Session, 2009, Report VI. Available at: [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_105119.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_105119.pdf)
12. Workers with Family Responsibilities Convention, 1981 (No. 156), ratified by 44 countries, but not by India. See: [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312301](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312301)
13. See: <http://www.undp.org/content/undp/en/home/mdgoverview/post-2015-development-agenda/goal-5.html>
14. Ankita Saxena (2014), 'Workforce Diversity: A Key to Improve Productivity', *Procedia Economics and Finance*, 11, Elsevier, pp. 76–85
15. UN Economic and Social Council (2015), 'Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)', presented at the 54<sup>th</sup> session of the Committee on Economic, Social and Cultural Rights. Available at: <http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>
16. Naila Kabeer (2012), 'Women's Economic Empowerment and Inclusive Growth: Labour Markets and Enterprise Development', CPDR and SOAS, Discussion Paper 29/12, p. 17
17. Indira Hirway, and Rania Antonopoulous (2010), 'Introduction' in Indira Hirway and Antonopoulous (eds) *Unpaid Work and the Economy: Gender, Time Use and Poverty in Developing Countries*, Palgrave Macmillan, p. 4
18. Hirway and Antonopoulous (2010), *Unpaid Work and the Economy*, pp. 7-9
19. Indira Hirway (2010), 'Understanding Poverty: Insights Emerging from the Time Use of the Poor', Hirway, and Antonopoulous (eds), *Unpaid Work and the Economy*, p. 29
20. The pilot survey was conducted in six states—Meghalaya, Gujarat, Tamil Nadu Orissa, Madhya Pradesh, Haryana . It employed three classificatory categories of SNA (market-oriented work), non-SNA (care) and personal time (leisure, sleeping, education, etc.).
21. Refers to NSS codes 92 (attended only to domestic duties) and 93 (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).
22. The average honorarium paid to Anganwadi workers and helpers ranges from Rs 5,000-7,000 and Rs 3,000–Rs. 4,500 respectively. The central government's share is limited to Rs 3,000 for Anganwadi workers and Rs 1,500 to the honorarium for Anganwadi helpers. Organised collectives of Anganwadi workers and helpers in some states have raised demands for an increase in pay, as well as pension.
23. Estimates provided by analysis of NSSO 2011–12 data by Ruchika Chaudhary.
24. Steven Kapsos., Andrea Silberman, and Evangelia Bourmpola (2014), 'Why is Female Labour Force Participation Declining so Sharply in India?', ILO Research Paper No. 10. ILO. pp 14 Available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_250977.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_250977.pdf)
25. Neetha N. (2006), notes that an NCEUS 2006 report advocating universal social security as right for all informal workers who are not provided insurance or pensions by the employer recommended the exclusion of unpaid family workers, seemingly without rationale. See: 'Invisibility' Continues? Social Security and Unpaid Women Workers, *Economic and Political Weekly*, 41:32, (Aug. 12-18, 2006), pp. 3497-3499
26. Manual scavenging is the caste-based practice of removing human excreta from dry latrines by hand, or with simple tools.
27. Anecdotal evidence from case studies shows that most women engaged in manual scavenging, for example, never had the opportunity to go to school and a negligible number completed high school. See: [http://in.one.un.org/img/uploads/Socio\\_Economic\\_Status\\_of\\_Women\\_Manual\\_Scavengers\\_Report.pdf](http://in.one.un.org/img/uploads/Socio_Economic_Status_of_Women_Manual_Scavengers_Report.pdf)
28. A Planning Commission study on the socio-economic status of rescued bonded labourers, of whom about a fifth were women, shows that three-quarters were illiterate. See: [http://planningcommission.nic.in/reports/serreport/ser/ser\\_bon0405.pdf](http://planningcommission.nic.in/reports/serreport/ser/ser_bon0405.pdf)
29. In India, the traditional system of labour bondage, in agriculture, was based on the exploitation of the erstwhile untouchable caste groups and extended beyond a single generation, trapping families in a cycle of indebtedness. The practice has transformed in some respects; declines have been seen in long duration and inter-generational bondage and the compulsion to enter relationships of bondage is usually economic, rather than social. However, certain aspects of the practice, such as indebtedness and the participation of SCs and STs persist. Although the practice is most visible in agriculture, it has been adopted in the unorganised sector, specifically in industries that have a high incidence of intermediaries or contractors.
30. Ravi Srivastava (2005), 'Bonded Labour in India: Its Incidence and Pattern.' ILO Working Paper No. 43, Geneva; ILO, p. 27.

31. For a review of conditions of employment in the *bidi* industry, see: CWDS (undated), 'Survey of Studies on Beedi Industry -With Special Emphasis on Women and Child Labour', Available at: [http://www.cwds.ac.in/researchPapers/survey\\_studies\\_beedi\\_industry.pdf](http://www.cwds.ac.in/researchPapers/survey_studies_beedi_industry.pdf)
32. Alakh N. Sharma and Nikhil Raj (2000), 'Child Labour in Sari Units of Varanasi' (draft report), Institute for Human Development and V.V. Giri Institute of Technology as cited in Human Rights Watch (2003), 'Small Change: Bonded Child Labour in India's Silk Industry'. Available at: <https://www.hrw.org/reports/2003/india/India0103-02.htm>
33. Srivastava(2005), 'Bonded Labour in India', p. 18.
34. CEC Uttar Pradesh Report (2005) as cited in Krishna Upadhyaya (2008), 'The Reality of Bonded Labour in India, Nepal and Pakistan.' Anti-Slavery International, p. 15. Available at: [http://www.antislavery.org/includes/documents/cm\\_docs/2009/p/povertydiscriminationslaveryfinal.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/p/povertydiscriminationslaveryfinal.pdf)
35. Jen Lerche (2007), 'A Global Alliance against Forced Labour? Unfree Labour, Neo-Liberal Globalization and the International Labour Organization', *Journal of Agrarian Change* 7:4, pp. 425–52.
36. See, for instance, Srivastava, 'Bonded Labour in India: Its Incidence and Patterns.'
37. SEEDS (2010), 'A Report on Bonded Labour Rehabilitation Scheme under Centrally Sponsored Bonded Labour System (Abolition) Act, 1976 in the state of Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh', New Delhi: Planning Commission, p. 16. Available at: [http://planningcommission.nic.in/reports/sereport/ser/ser\\_bon0405.pdf](http://planningcommission.nic.in/reports/sereport/ser/ser_bon0405.pdf)
38. National People's Tribunal (2012), 'Living Wage as a Fundamental Right of Indian Garment Workers' Bangalore, 22-25 November, p. 5
39. P. Overeem and M. Theuws (2014), 'Flawed Fabrics: The Abuse of Girls and Women Workers in the South Indian Textile Industry', SOMO and ICN. Available at: [http://www.somo.nl/publications-en/Publication\\_4110?set\\_language=en](http://www.somo.nl/publications-en/Publication_4110?set_language=en)
40. A Tamil word which refers to the state of happiness a woman attains once she is married and cared for by her husband.
41. See: ASK (2014), Addressing Modern Slavery in Tamil Nadu Textile Industry – A Feasibility Study Report , Freedom Fund, p. 25 or; see READ (2015) *End All Forms of Forced Labour in the Garment Sector*, p.8. Available at: <http://www.indianet.nl/pdf/EndAllFormsOfForcedLabourInTheGarmentSector.pdf>
42. Findings based on interviews conducted in two rounds with a sample of approximately 500 workers. See SAVE (2014), 'Sumangali Trend Analysis January 2013–June 2014'; SAVE (2015) 'Sumangali Trend January 2015'.
43. Harsh Mander, 'Child 'camp coolies' in Tamil Nadu ' 12 January 2016, *Times of India*. Available at: <http://www.livemint.com/Opinion/ZpH9hN76b27t74BBgFPc7K/Child-camp-coolies-in-Tamil-Nadu.html>
44. Ibid.
45. In sum, the following labour acts are being violated: factories act, apprentice act, payment of bonus act, sexual harassment act, bonded labour act, trade union act, equal remuneration act, payment of wages act, minimum wages act, ESI act, PDF act, contract labour act, worker's compensation act, The Tamil Nadu industrial establishments (national & festival holidays) act, weekly holidays act, prohibition of dowry act, juvenile justice act, and industrial disputes act.
46. Fact finding on suspicious death of mill workers, SSM Spinning Mill, Vedasandur, Dindigul district, 26 February 2015. Mill management did not interact with the mission members.
47. E.C. Hughes (1951), 'Work and Self' in J. Rohrer and H.S. Muzafer (eds), *Social Psychology at the Crossroads; the University of Oklahoma Lectures in Social Psychology*, Oxford, England: Harper, pp. 313–23
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