

# Outside the Realm of Protective Labour Legislation: Saga of Unpaid Labour in India

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Within the large, growing segment called the unorganised economy, the dominant category is that of the self-employed, within which a significant percentage of women work as “unpaid family workers”. While women’s work and women as workers suffer exclusion from protective legislation, this paper traces the trajectory of simultaneous exclusion and inclusion of women by going back to some of the seminal documents that were the outcomes of officially constituted commissions and committees. Through a critical reading of these documents, this paper revisits some of the arguments and recommendations of these bodies. It provides an overview of the dimensions of the problem of the low level and poor quality of employment in the country, with a specific emphasis on the categories that capture women’s work. It engages with specific aspects of ineffectiveness of protective labour laws as far as women are concerned. It also reflects on the larger implications of the continued expansion in the numbers of, and time involved in, “unpaid labour”, as well as the continued denial of worker status to women.

A remarkable “achievement” of economic “development” in post-independent India has been, not just the growth of the informal sector and of those being employed informally, but also the phenomenon of “informalisation of the formal sector” (NCEUS 2008). What is also truly remarkable is the consistent manner in which disproportionately larger numbers of women and their “work” either become invisible in data systems or get captured in categories that fall outside the purview of protective legislation.

This paper traces the trajectory of simultaneous exclusion and (peripheral) inclusion of women by going back to some of the seminal documents that were the outcomes of officially constituted commissions and committees. These documents not only engaged with the broad theme of exclusion/inclusion extensively and holistically, but also strongly recommended, among other things, the enactment of new laws, modification and expansion of coverage of existing laws, and, stringent implementation of all laws in the spirit of enhancing the status of the marginalised, women included, from non, second class citizens, to full citizenship. An avowed purpose of this exercise is to comprehend what accounts for the continued denial of “worker” status to large numbers of women, whose presence as “informally employed” and as “unpaid family workers” is otherwise recognised. Through a critical reading of these documents, we revisit some of the arguments and recommendations of these bodies.

The main documents that we have examined include: Towards Equality: Report of the Committee on the Status of Women in India (GOI 1974); Shramshakti: Report of the National Commission on Self-Employed Women and Women in the Informal Sector (GOI 1988); Report of the Committees Constituted to Study the Problems and Issues of Unorganised Labour in Tamil Nadu (GOIN 1998); Report of the Time Use Survey (GOI 2000); Report of the Second National Commission on Labour (GOI 2002); Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector (NCEUS 2008); and The Challenge of Employment in India: An Informal Economy Perspective (NCEUS 2009).

The paper is organised as follows: in Section 1<sup>1</sup> we provide an overview of the dimensions of the problem of low level and poor quality of employment in the country, with a specific emphasis on the categories that capture women’s work. In terms of data we begin with the most recent available statistics and trace back the situation of women’s employment to the early decades of post-independent India as captured and documented by the different reports mentioned above. In Section 2 we engage with specific aspects of ineffectiveness of protective labour laws as far as women are concerned. In Section 3 we reflect on the larger implications of the continued

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expansion in the numbers of, and time involved in, "unpaid labour", as well as the continued denial of worker status to women.

### 1 Women Work but *How* and in What Capacity?

All the reports mentioned above, in different ways, lament the fact that the system has no credible data on the unorganised economy, where bulk of women work. More significant, official recognitions of double-burden or even "triple overlaps" (of gender stratification, economy and family, Blumberg 1991), when it comes to women's work, have not translated into adequate quantity and quality of support services to relieve women of such double-burden and/or triple overlaps. What we, therefore, have are estimates of the different kinds of unpaid work that women are forced to undertake for their own survival and for the survival of the households into which they are either born or get married into. Over the years, the number and percentage of women in the unpaid category has increased not decreased, even in periods when the economy has returned significantly high growth rates and has been characterised as "shining".

In this section, using data provided by the most recent of the above documents, namely, the Reports of the National Commission for Unorganised Sector (henceforth, NCEUS 2008 and NCEUS 2009), first, we provide a glimpse of the dimensions of the nature, category and quality of employment generated by the economy (as on 2004-05) to be able to situate and contextualise women's employment. Two, taking each of the reports mentioned above, we trace the observations that each have recorded on the twin issues of non-collection/non-availability of data relating to the unorganised economy in general, and women's work in particular, and on the theme of unpaid work.

As per the estimates of the NCEUS (2008), the total numbers employed (principal plus subsidiary) in the Indian economy, computed from NSS 61st round 2004-05, was 458 million, of which the unorganised sector accounted for 395 million, accounting for 86% of total workers in 2004-05. The commission has made a distinction between sectors of employment (organised and unorganised) and formal and informal employment in order to highlight the important fact that not all those employed in the organised sector are formally employed. Thus, for example, the commission finds that, while the total employment in the economy has increased between two National Sample Survey (NSS) Rounds (that is between 1999-2000 and 2004-05), the increase in total employment has been of the informal kind, even if, sectorally, employment increased by 8.5 million in the organised sector.<sup>2</sup> In other words, what this denotes, according to the commission, is "informalisation of the formal sector" (NCEUS 2008: 4). A point that needs to be flagged right at the beginning is the following: it was only as late as 2004, when the NCEUS was constituted and which determinedly as a body grappled with the contentious issue of what constitutes the organised/unorganised sector and formal/informal economy and came up with definitions and estimates of the same, that the dimensions and ramifications of unorganised economy have become clearer and starker. Thus far, every other report mentioned above, and the system in general, has been content to merely describe the unorganised economy in terms of its functioning characteristics, even while admitting

that the unorganised economy was where the bulk of Indian labour (upwards of 90%) actually worked.

In 2004-05, of the 148 million women workers in the Indian economy, 142 million or almost 96% were *unorganised workers* (against 91% unorganised male workers). This included 91% of women workers in the *unorganised sector plus those working informally in the organised sector*. In terms of status of employment, the bulk of unorganised sector employment was *self-employment*, followed by casual employment. For the country as a whole, a great majority of the workers (males and females) were either self-employed (56.6%) or casual workers (28%). Only 15.3% of the workers were regular salaried/wage workers. *The self-employed category consists of own account workers, employers and unpaid family workers*. Data reveal a decline in the proportion of own account workers and employers for women from 24% in 1983 to 17% in 2004-05. On the other hand, the share of unpaid family workers had increased from 36% to 44% during this period. Within this, the rural female workers constituted the most disadvantaged in terms of workforce characteristics. Not only the share of unpaid family workers among rural females was the highest, it also had increased by 10 percentage points from 38% in 1983 to 48% in 2004-05 (NCEUS 2009: 59, see also Table 1).

In 2004-05, the bulk of women workers overwhelmingly belonged to the self-employed category and also dominated the "unpaid family workers" section within the category of self-employed. This telling comment on how "India Shining" has not only bypassed, but is actually overburdening without compensating the bulk of women and women's work in this country. That the NCEUS is not the first body to officially highlight this phenomenon will become clear as we trace the official post-independent history of unpaid work and the different facets of the unpaid work of Indian women beginning with the Report of the Committee on Status of Women (GOI 1974, henceforth 1974 Committee).

We quote in some detail the observations of the different committees and commissions on the theme of unpaid work only to underscore the point that despite these observations and despite

**Table 1: Percentage Distribution of Workers by Activity Status**

Population Segment	Year	Self-Employed			Regular Salaried/Wage Workers	Casual Workers	Total
		Own Account and Employers	Unpaid Family Workers	Sub-Total			
Rural male	1983 -	45.85	14.66	60.52	9.76	29.73	100
	1993-94	40.39	17.36	57.74	8.53	33.73	100
	2004-05	41.9	16.59	58.48	8.93	32.59	100
Rural female	1983 -	23.91	38.01	61.92	2.77	35.31	100
	1993-94	16.35	42.75	59.1	2.67	38.24	100
	2004-05	15.94	47.98	63.92	3.68	32.41	100
Urban male	1983 -	33.27	7.59	40.86	43.74	15.4	100
	1993-94	33.35	8.27	41.62	42.28	16.1	100
	2004-05	36.2	8.42	44.62	40.84	14.54	100
Urban female	1983 -	26.43	19.04	45.47	26.27	28.26	100
	1993-94	24.16	20.46	44.62	29.51	25.87	100
	2004-05	24.14	23.05	47.19	35.97	16.84	100
Total male	1983 -	42.92	13.01	55.93	17.69	26.38	100
	1993-94	38.58	15.03	53.61	17.18	29.21	100
	2004-05	40.23	14.2	54.43	18.26	27.31	100
Total female	1983 -	24.21	35.76	59.97	5.55	34.48	100
	1993-94	17.45	39.6	57.05	6.46	36.49	100
	2004-05	17.28	43.91	61.18	8.95	29.86	100
Total persons	1983 -	36.6	20.69	57.29	13.59	29.11	100
	1993-94	31.74	22.88	54.72	13.71	31.57	100
	2004-05	32.83	23.77	56.61	15.26	28.13	100

Source: NCEUS 2009, p 59.

the fact that these bodies backed their observations with strong legal recommendations to rectify the disadvantages that, women in particular, suffered because of their overwhelming presence in the category of unpaid workers, the system continues to function in the “business as usual” mode.

The 1974 Committee was constituted almost 25 years after independence and its report entitled “Towards Equality” could be regarded as the first comprehensive account of the status of women in India using a range of social, economic, political and legal parameters to contextualise women’s position within the polity and economy of independent India. The 1974 Committee immediately realised the almost complete non-existence of meaningful data on the unorganised sector, where bulk of women work and continues to work till date. Its observations on the difficulty of arriving at credible numbers of those employed are reproduced below:

Next to agriculture the largest numbers of women are employed in various industries, trades and services in the unorganised sector both in rural and urban areas. The statistics relating to women workers in these unorganised and regulated industries and services are highly inadequate and unreliable. At present there is no agency responsible for the collection of employment statistics in the unorganised sector. The National Commission on Labour, confessing its difficulties in identifying unorganised labour by any exact definition, took recourse to describing some of their characteristics and constraints... While the Census of 1961 and 1971 give us some estimate of women in household industries, we regret to find that no clear estimate is available regarding the actual number of women engaged in the vast unorganised non-agricultural sector (pp 169-70).

On the theme of unpaid work, the 1974 Committee recorded thus:

The gradual commercialisation and modernisation of the economy and the efforts made by government to replace traditional by modern institutions of credit and marketing, to stabilise ownership of land, and to maintain minimum wages, have by no means succeeded in “organising” the production relations to control the degree of exploitation of the weaker section... Traditional modes of production relations which defy modern classifications into employers and employees, labour and capital, rent and interest, still prevail in most industries in this sector. The impact of this intermixture has been greater on women... Many of them are unpaid family workers, both in family enterprises, and in wage employment where their contribution to the family earnings as helpers of the men earners is not always realised or admitted. These unpaid family workers are predominantly women and children. Most of them fulfil dual roles by engaging in economic and household activity. More than half of the women who enter the labour force before the age of 15 are unpaid family workers, as compared to one-third of the men in the same category... Despite the variations in the concepts and the timings of the survey, the proportion of unpaid family workers shows a remarkable steadiness in the various rounds... The proportion of unpaid family workers aged 10 and over, estimated from 1961 Census, was about 14% for males and 41% for females... The distribution of the unpaid family workers by age-groups indicates that the proportion declines considerably in the case of males after the age of 24, but for females, who form a higher proportion in the age-group 10-19, the decline is marginal (pp 157-59).

Having noted the above, the 1974 Committee, however, did not specifically address the theme of unpaid work in its recommendations for action, which were otherwise very elaborate; much emphasis was placed on extending the coverage of existing legislation, strengthening the administrative infrastructure in-charge of implementing labour policies and the like.

Fourteen years after the 1974 Committee, the rationale for the constitution of the National Commission on Self-Employed Women

and Women in the Informal Sector (hereafter 1988 Shramshakti Report) by the government of India was the following:

Despite the existence of various Constitutional and legal provisions safeguarding women's employment a large number of women workers, particularly in the unorganised sector suffer from various disadvantages relating to their working lives as well as in their homes. The coverage of labour laws has not benefited these women workers in many crucial areas, especially health, maternal and social security... Government of India feel that it is necessary to conduct a comprehensive examination and study of self-employed women workers, as it is in this area that the lack of access to credit marketing, health and social security are most discernible. It has therefore been decided to constitute a Commission on Self-Employment women... the above terms of reference of the commission would also cover all unprotected women labour in the country and extend to women in the informal sector (GOI 1988: 332-33).

It is interesting that the 1988 Shramshakti Report merely mentions in passing that the government had appointed a committee on the status of women which had “made a comprehensive study of the problems of all women” (p 7) without engaging with crucial questions such as: did the government that had earlier appointed the 1974 Committee formally accept the committee’s report? If yes, what, if any, were the actions initiated based on recommendations of the 1974 Report? If not accepted, why not? In hindsight, reflecting on such questions is important for feminist praxis. While the 1988 Shramshakti Report has dwelt considerably on the theme of physically mobilising and organising the labouring women, no thought has gone into why, simultaneously, mobilisation of academics/intellectuals to hold government accountable for not engaging with reports of its own committees and commissions, could not have constituted an equally important mode of action. This is particularly so since, a significant dimension of the problem earlier flagged by the 1974 Committee, had to do with concepts, contexts, definitions and estimates of the unorganised economy, where hardly any labour laws apply, but in which the bulk of the labour force ekes out a living. Nevertheless, in its own way, the 1988 Shramshakti Report has also engaged with the dimensions of the category, *self-employed*, through an examination of NSSO data.

Self-employment, by and large, constitutes the dominant sector of employment in our economy... According to the 38th Round of the NSSO (1983) over 164.7 million workers (principal plus marginal workers by usual status in the age group 5 years and above), constituting 57.3% of the total workforce, are absorbed in this sector. Out of a total of 98.4 million female workers, as many as 59.1 million (60.1%) are engaged as self-employed workers the percentage being somewhat higher than for males (55.9%). The proportion of females engaged as self-employed workers in the rural areas is much higher (61.9%) than in the urban areas (45.8%)... The total percentage of self-employed workers to total workers in the household enterprises in the case of males is 46.1% as against 18.7% in the case of females. On the other hand, *the proportion of male workers working as helpers in household enterprises is 13.4% as against 36.1% in the case of females* (emphasis added) (GOI 1988: 33-35).

A dimension of unpaid work covered by Shramshakti 1988 is the “proportion of females engaged in domestic duties along with free collection of goods”, (that is NSS activity Code Status – 93) and “proportion of females attending domestic duties only”, (that is NSS Activity Code Status – 92) using NSSO 38th Round data pertaining to 1983. Further, the report also provides information on the percentages of women (among those usually engaged in household duties) willing to accept work, part or full time, if the same is made available to them at their residence. Similar information is

provided by NCEUS 2008 for 2004-05. What becomes immediately clear from comparing 1983 and 2004-05 data is that the percentages of women reporting domestic duties as principal status, and, further, the proportions of women combining domestic duties with a number of other activities that help their households save incomes, remains substantial between the two time periods. We illustrate with data relating to rural women: 53% of rural women (age 15-59 years) in 2004-05 against 42% of rural women (age five years and above) in 1983, reported being “usually engaged in domestic duties”. Similarly, in 2004-05, of the rural women reporting domestic duties as their principal status, 72% were willing to accept work at home on part-time basis, while 23% were willing to accept work on full-time basis. In 1983, 61% of the rural women (reporting domestic duties as principal status) were willing to accept work at home on part-time basis, 30% on full-time basis, and 9% wanted work occasionally. Both reports also give details of the type of work that women were willing to take up at home.

The chapter on recommendations in the 1988 Shramshakti Report begins thus:

... Women's work as home-makers must be recognised as social/economic production. For, when women fetch water, gather fuel and fodder or tutor their children, they are performing services in the absence of which market services would have to be purchased. Only if this recognised, can other consequences flow from it such as broader definition of women's work. The National Commission recommends that all subsequent data collection efforts should enlarge the definition of women workers to include all such activities paid and unpaid performed within the home or outside as an employee or on own account (pp 249-50).

The report has a further section entitled, “Support Services and Other Programmes”, the preamble to which states:

In line with our approach that all women are “workers”, the distinguishing feature of a woman worker is her responsibility for bearing and rearing children. In addition, the responsibility of doing all household chores and looking after the aged and sick has traditionally been her responsibility... It is therefore necessary that social support services should be provided to women workers for assisting them to do their work at home and outside, better and with less worry (p 300).

The 1988 Shramshakti Report no doubt carries forward the agenda of elaborating on the theme of unpaid work by women in terms of recognising both women's unpaid work as family helpers, and domestic unpaid work. It also backs up the recognition of unpaid domestic work with recommendations aimed at reducing domestic drudgery. Nevertheless, the fact that, the component of large numbers of women employed as unpaid family labour continue to remain beyond the reach of any protective labour legislation, does not merit a specific attention.

The decline in worker population ratios in the 1990s, particularly sharp among certain age categories of rural women brought to the fore some interesting debates among economists anxious to interpret and explain the phenomenon (Sundaram 2001a and 2001b; Hirway 2002). While Sundaram attempted to attribute the declines to “beneficial rise in student-population ratios”, among others, Hirway's examination of the argument established the inadequacy of

Sundaram's explanation. On the contrary, Hirway's probe brought out the limited ability of NSS Surveys to capture the changing profile of work and workers in the economy. To quote Hirway:

It seems to us that the concepts and methods used by NSSO to net work and workers are not able to capture the work of the poor, and particularly, of women satisfactorily... It is [therefore] possible that the decline in the Work participation Rates in the nineties is due to expansion of non-reported [by the NSSO] part of the workforce which is employed in what is known as “difficult to measure sectors” [such as subsistence work, home-based work or informal work] of the economy (Hirway 2002: 2029).

### Time Use Surveys

To a large extent, this was rectified by the conduct of Time Use Survey (henceforth, TUS) by the Central Statistical Organisation of the government of India in 1999-2000. The report of the TUS (2000) for the first time provides an official visibility to women's work burden through its data covering various household and non-household activities. The survey was conducted in 18,591 households; spread over six selected states, namely, Haryana, Madhya Pradesh, Orissa, Tamil Nadu, Gujarat and Meghalaya. The report classifies activities using the 1993 System of National Accounts (SNA). It makes use of three categories: SNA, Extended SNA and Non-SNA. The SNA activities consist of primary production activities, like crop farming, animal husbandry, fishing, forestry, processing and storage, mining and quarrying; secondary activities like construction, manufacturing and tertiary activities like trade, business and services. Extended SNA activities include household maintenance, care for children, sick and elderly. Non-SNA activities include learning, social and cultural activities, mass media, personal care and self-maintenance. Table 2 compares work participation rates (WPRS) using NSSO and TUS methods, while Table 3 (p 84) highlights, among other things, the time spent on paid/unpaid work.

- (1) Comparing data on WPRS based on the NSSO and the TUS, Hirway (2002) draws some very crucial conclusions that have significant conceptual and policy implications: The WPRS based on the TUS are higher than those based on NSS for males as well as females.
- (2) The differences between the two sets are higher for women than for men.
- (3) The extent of underestimation of workforce under NSS rounds as well as the differences between male and female WPRS within a state, is not the same across all the states. Neither are these differences related to the level of economic growth of a state.
- (4) Dividing work into “paid” and “unpaid” categories (Table 3), Hirway finds that, while the share of unpaid SNA work is significant in India (for both men and women) in terms of the number of persons engaged in it as well as in terms of the time spent on such

**Table 2: Comparing WPR between NSS and TUS (%)**

States	NSSO 1993-94*		NSSO 1999-2000				TUS 1998-99		Difference between TUS-WPR and NSS-WPR (1993-94)		Difference between TUS-WPRs and NSS-WPRs (1999-2000)	
	Male	Female	Rural		Urban		Male	Female	Male	Female	Male	Female
			Male	Female	Male	Female						
Haryana	45.6	18.8	46.2	17.7	50.2	10	57.3	56.16	11.7	37.36	11.1	38.46
MP	52.5	27.17	51.2	30.7	47.3	12.1	60.5	49.43	7.96	22.26	9.27	18.73
Gujarat	54.6	26.39	57.1	35.5	52.9	12.5	60	44.17	5.42	17.78	2.92	8.67
Orissa	52.9	20.48	52.7	23.3	45.7	11.6	59.9	55.47	7	34.99	7.18	32.17
Tamil Nadu	56.6	34.2	56.6	38.1	55.2	20.1	66.1	50.25	9.47	16.05	9.5	12.15
Meghalaya	59.1	42.88	55.6	42	39.3	19.7	56.2	52.45	-2.83	9.57	0.62	10.45
Combined states/all India	52.6	23.41	51	25.3	50.9	12.8	61.3	50.32	8.73	26.91	10.32	25.02

\* The data refer to current weekly status of workers.

Source: Hirway (2002), p 2031.

activities, however, uniformly across all states, the number of women engaged in unpaid activities as well as the time spent by women in such activities is higher than that on paid activities; women also spend more *time* on unpaid activities than men.

**Table 3: State-wise Distribution of Time Spent (in Hours) in SNA Activities by Mode of Payment and Gender**  
(Participants)

States	Male			Female			Total		
	Paid	Unpaid	Per Cent Time on Unpaid Activities	Paid	Unpaid	Per Cent Time on Unpaid Activities	Paid	Unpaid	Per Cent Time on Unpaid Activities
Haryana	33.09 (1152)	18.12 (1347)	35.38	4.13 (215)	25.34 (1494)	85.99	20.06 (1387)	21.37 (2841)	51.58
Madhya Pradesh	29.41 (5247)	23.34 (6311)	44.25	14.31 (3072)	15.75 (4391)	52.40	22.99 (8319)	20.12 (10702)	46.67
Gujarat	44.37	14.17	24.21	17.18 (1747)	13.87 (2541)	44.67	33.26 (5706)	14.05 (6438)	29.70
Orissa	31.25 (2103)	22.42 (2589)	41.77	8.00 (583)	18.18 (3235)	69.44	20.55 (2686)	20.47 (5824)	49.90
Tamil Nadu	41.42 (3959)	13.36 (4863)	24.39	21.8 (3034)	10.32 (4280)	32.45	32.74 (8667)	12.04 (9143)	26.89
Meghalaya	17.34 (374)	35.39 (740)	67.12	7.83 (196)	25.34 (692)	78.39	12.65 (570)	30.44 (1432)	70.64
Combined states	36.54 (18468)	18.12 (19747)	33.15	14.87 (8847)	15.18 (16633)	50.52	27.16 (27315)	16.85 (36380)	38.29

Source: Gol (2000); Quoted in Hirway (2002), p 2032.

(5) Hirway hypothesises (in the absence of time series data) that the decline in the NSS-based WPRs in the 1990s could be a result of the increased share of the unpaid component of the SNA in the 1990s, and hence, in a way is not really a decline but a shift, indicating deterioration in the quality of employment.

[An] increase in “the difficult to measure” sectors of the SNA work as well as in extended SNA work does indicate deterioration in the quality of employment. The former indicates an increase in employment with low productivity and low wages, while the latter indicates an increased burden on women who are primarily responsible for carrying out unpaid domestic services (Hirway 2002: 2035).

Taking SNA and extended SNA activities together, the government of India’s own Report (2000) makes the following important observation:

If we take SNA and extended SNA activities together... women were found to be working for longer hours than men. If we work out the average of women’s work to the total work of male and female, it works out to 55%, which compares quite well with the figure of 53% quoted in the UNDP Human Development Report for 1995. Therefore, if extended SNA activities are included in economic activities, the contribution of women will be *higher* when compared to men (emphasis added) (GOI 2000:81).

As the NCEUS 2008 Report points out, recognition and inclusion of extended SNA activities as economic activities will not result in women getting higher incomes. “What it means is the absence of recognition of the kind of work, which although not in the realm of monetisation, is important to the sustenance of the family as well as the economy. *Recognition of women’s contribution to extended SNA could and should lead to greater appreciation of public policies for the welfare of women*” (emphasis added) (NCEUS 2008: 79). We will come back to this theme in Section 3.

## 2 Aspects of Ineffectiveness of Protective Labour Legislation

In Section 1 our effort was to trace the manner in which economic development has, not just, not “formalised” employment, but worse, as far as women are concerned, bulk of them as well bulk of

their time continue to be spent on “unpaid activities” being it domestic or non-domestic. In this section we dwell on those minuscule percentage of women employed in the non-farm sector to whom, theoretically, protective labour legislation should apply, but, by and large, does not. There is no way we can provide an exhaustive account of the way in which the functioning of this sector makes women workers ineligible and/or excludes from protective legislation, however “ineffective” they may have been in the case of all labour. The emphasis here is more to highlight the official recognition of non-applicability of existing protective labour legislation; further, the burden of our argument is also that, mere effective implementation alone will not suffice, since disabilities are built into the manner in which the legislations themselves have been framed and enacted.

The Report of the Second National Commission on Labour (henceforth SNCL 2002) and the Report of the Committees Constituted to Study the Problems and Issues of Unorganised Labour in Tamil Nadu (henceforth TN 1998) have recorded several examples of the blatant manner in which not only are provisions of the law violated on the ground, but, worse, very often, the machinery to administer the law remains either to be created and/or to be made functional. Unlike the SNCL 2002, the Report of TN 1998 provides glimpses of how administratively, protective legislation has been rendered dysfunctional. We, therefore, dwell at some length on the observations of TN 1998. In our opinion, the findings of the committee sum up what is by now well known, though it rarely gets officially endorsed. The committee identifies 35 occupations, some of which are covered by some labour welfare enactments, while others are not. The committee has found that the conditions of work do not vary much between protected or unprotected industries. Its overall findings are discussed with few illustrations under three broad heads:

(a) Mode of recruitment of workers; (b) Conditions of work; and (c) Health and safety aspects of work.

**(1) Mode of Payment:** A striking feature of most unorganised sector employment is that workers are employed largely through unregistered contractors or subcontractors.

The destinies of the workers are linked up with the machinations of a large number of contractors, on whose whims and fancies, likes and dislikes, depend the availability of work for this type of labour. These middlemen have the least regard for the health and welfare of the workers, and in fact, these middlemen exploit the workers by taking advantage of their economic dependence and ignorance (GOTN 1998: 22).

The larger implication of the contract system of employment is that, large numbers of workers remain outside the purview of the Factories Act, since employers recognise and deal only with contractors and not directly with the labour that the contractors bring in. For example, the committee found that, in the saltpans of Vedaranyam, Tamil Nadu, barely 50 to 60 workers were in the payroll of the establishment out of a total strength of 600 workers whom the

committee found working. Similarly, in vessels manufacturing units, the committee notes that the most important characteristic of this employment is that workers are employed only indirectly on piece-rate basis or job-rate basis through a contractor who mediates between the actual employer and the workers. This particular employment has been included in the schedule of employment under the Minimum Wages Act of the Labour and Employment Department in 1978; besides, the minimum rates of wages have been fixed and revised periodically. Nevertheless, the committee notes as follows:

Unfortunately, however, the benefits conferred by the minimum wages in law insofar as these workers are concerned, have not yet been translated into reality, strictly on account of the contract labour system carried on by the maistries [contractors] in such an ingenuous way that the number of workmen engaged in every such industrial establishment is always maintained below 10, with the result, neither the Contract Labour (Regulation and Abolition) Act, nor the provisions of the Factories' Act is made applicable to these unregulated factories (GOTN 1998: 64).

**Conditions of Work:** The committee found that working conditions in almost all the industries were deplorable. Further, it noted that employers used great ingenuity to keep their units outside the purview of the Factories Act. This allowed the employers to fix wages arbitrarily, often below the statutory provisions of the Minimum Wages Act for the concerned industry. A significant finding of the committee is the active gender discrimination practised by the industries covered by them. For example, commenting on the practices in the *appalam* (papad) manufacturing industry, the committee notes:

Equal wage for equal work is something utopian and hitherto unheard of by the workers in this occupation. A female worker doing identical work in this occupation is denied 50% of the wages given to the male worker. A male worker earns around Rs 40 per day while a female worker is paid Rs 20 only per day (GOTN 1998: 19).

Similarly, in the coir industry, while a male worker earns, on average, about Rs 40 per day, a female worker is paid from Rs 25 to Rs 27 per day only (ibid: 29).

Further the committee noted that the employees in the *appalam* industry were mostly girls who had been forced to drop out from schools and enter the industry to augment their family income.

A point stressed by the committee in the context of the match and fireworks industry was that large numbers of women and children were engaged as homeworkers in processes that were delinked from other processes that required factory premises. In the latter processes only male workers were employed. Unfortunately, the committee did not proceed beyond recording this observation. To us this fact has tremendous implications from a gender angle. Even if eventually the committee were to succeed in regulating the factories, this by itself was not sufficient to ensure regularisation of those processes of the industry now carried on as home-based work by women and children.

**Health and Safety Aspects of Work:** In a refreshing departure, the committee comments extensively on safety and health aspects, even if at a general level. Its observations are based on what it encountered during field visits plus the perceptions of the workers whom it interviewed. It observes that the strain of working long hours in unhealthy and insanitary conditions and the low standard of living due to the meagre earnings, contributed to a great extent to workers' poor state of health.

In most industries, the workers are not provided with any protective equipment. In those units where such equipment is provided, the committee found them to be totally unsuitable. In bleaching and dyeing units, the committee found workers standing very close to the metal pot fixed over a furnace, and, without wearing any goggles. Workers were also exposed to risks from handling caustic soda, acids and other dangerous effluents emanating from the different processes. In the cashewnut industry (which is listed in the "dangerous operation" category of the Tamil Nadu Factories Rules, 1950), the committee found that the scrubbing and shelling of cashewnuts results in skin cancer. Contact with shell oil causes the peeling of outer skin though it does not result in permanent disablement. The committee found many workers afflicted by dermatitis. In industries, where the concentration of dust particles in workplaces was heavy and continuous, it found the workers prone to respiratory disorders.

In a nutshell, the committee recorded thus:

Since government has not created any enforcement machinery to deal with these employments, even the maintenance of records and registers are not ensured. In this vicious-circled situation, the Committee would like to impress upon the government that creation of adequate infrastructure, with enough manpower and means of mobility is as important as that of scheduling of employment and a fixation of minimum wages. Unless there is enforcement, mere adding of the employments into the schedule and fixation of minimum wages would not do any good to the workers (ibid 84).

Our purpose in discussing the committee's report is to highlight the official recognition, given, albeit belatedly, to not just the abysmal contractual and physical conditions of informally employed workers, but also the risks to their health associated with such employment. The committee believes that the creation of "appropriate administrative and infrastructure machinery" to implement existing legislation will go a long way towards addressing the problems it highlights. On this point, we do not agree with the committee since, as the committee itself has documented, employers have been able to circumvent existing legislation and employ labour without formally recognising them as such.

Below we highlight, *thematically and through illustrative examples*, certain observations made by the reports of the NCEUS 2008, and the SNCL 2002, which, again, *officially corroborates* what have already been extensively documented independently by several independent researchers and by other official reports.

## 2.1 Denying the Presence of Women Workers and Devaluing the Work of Women

While discussing the mode of recruitment and nature of work in the brick and tiles industry, for example, the NCEUS (2008) notes that "Only the male workers are registered as workers in the muster roll of the employer and the rest of the family remains invisible to statistics, policy and social protection provisions. Working hours for all workers are about 12-14 hours including for the women who are not on the muster roll (NCEUS 2008: 37).

The SNCL 2002, quoting, as illustration, a study conducted in Mumbai on "Women Building Workers" notes as follows:

Building workers are employed mostly on daily wages, and occasionally according to measurement of the work completed. However, names of women do not often appear on the wage register because their output gets added to that of their menfolk except in the case of

single women workers. Wages are paid every ten days only to men, and these include the wages due to other members of the family. Often, maternity leave is not extended to women building workers, although it is a statutory obligation. This results in frequent miscarriages... In general, women building workers are deeply concerned about conditions of work. Pay inequalities, invisibility as producers and earners, blocked opportunities of advancement for want of skill, frequent relocation, lack of freedom to plan their work, hard and long working hours and coping with multiple roles result in a high level of stress. It generates attitudes of passive acceptance of helplessness and misery and conformity, rather than reaction (ibid: 637-38).

This echo the findings of several similar studies such as, for example, that of Meena Gopal (1999) and Millie Nihila (1999). Gopal's study of the Beedi industry in Tamil Nadu, describes in considerable detail, among other things, the manner in which the selective issuance of passbooks to women workers in the beedi industry enables the beedi contractors to exercise control over the work and time of the workers; worse, the anxiety that is deliberately allowed to build up before a passbook is issued (which quite often may not materialise) keeps women across households divided to the advantage of the contractors. The study provides an extremely nuanced account of how region, class, religion, gender and organisation of the industry combine to make this home-based activity extremely stressful for the women workers.

Nihila's study of the leather tanning industry concentrated in the district of Dindigul in Tamil Nadu, centre stages the fact that the provision of the Factories Act, 1948 (according to which women and children are prohibited from being employed in tanning of leather because of the hazardous nature of operations involved in tanning) is used to deny worker status to women employed in the industry. According to her estimates, almost 30% of the total tannery workforce is female. A manner in which this denial is achieved is by recruiting women through contractors; the latter are on the payrolls of the employers, not the actual women working. The combination of the provision of the Factories Act, 1948, and recruitment through contractors, has resulted in several adverse consequences for women workers. For example, separate toilet or restrooms for women do not exist; no demands for protective gears can be made by these women who have to bare-handedly skin dead animals, clean lime pits soaked with toxic chemicals and waste of skinned animals, among other arduous and unclean jobs.

## 2.2 Discrimination in Wage Structure and Wage Payment

The NCEUS (2008) finds that even in industries where gender stereotyping of tasks seemed to have broken down with men and women workers performing all tasks, the wage-structure continued to remain gendered, with women uniformly receiving less wages than men. Further literacy had no role to play in the determination of wages. In addition, the NCEUS (2008) also notes that there is a plethora of minimum wages set for different employments within a state and across states; uniformly these are differentially applied across gender. Worse, the NCEUS finds that

the share of wage workers securing wages below the National Minimum wage norm is significantly high across industries clearly indicating that the minimum wage regulations are hardly being followed and applied in most industries. In fact 85% of all casual workers in rural areas and 57% of them in urban areas get wage below the minimum wages (ibid: 48).

Overall, the official reports quoted above corroborate that, lack of a clear-cut employer-employee relationship in the case of the self-employed and among the outworkers/homeworkers, and lack of a designated place of work for the majority, particularly women, adds to the problem of invisibility of such enterprises. It is this invisibility at all levels and denial of status as worker that has enabled employers as well as the State to deny women their due, however minuscule the scale and poorly administered the statutory benefits admissible to legitimate workers may be. Worse, this invisibility also enables the employers and the State to deny the hazardous, inhuman and exploitative conditions under which most women labour.

What has received some attention in the Report of SNCL,<sup>3</sup> and in the Report of TN 1998, but none at all in the NCEUS Report 2008, is the theme of labour administration. For example, on the theme of occupational safety and health of workers, the SNCL Report 2002, makes it amply clear that occupational safety and health of labour has never been a priority item on the agenda of any government even going by simple indicators such as number of posts of safety inspectors created, number of vacancies that remain unfilled in these posts despite growth of such industries that mandatorily require monitoring, number of cases of violations filed, numbers disposed off, etc. The TN 1998 Report has more damaging observations: one, it points out how governments have desisted from using their powers of "notification" of industries under Section 85 of the Factories Act, 48, despite sizeable numbers of workers being employed in a range of industries not covered as yet by any labour laws. Two, the report also details how mindless, incomplete actions, such as the one undertaken in Tamil Nadu, namely, the bifurcation of labour department into a labour department and an inspectorate of factories has resulted in a deadlock to the detriment of workers;<sup>4</sup> three, the report notes the near impossibility of effective enforcement of any labour law given the present strength of the labour department;<sup>5</sup> four, the report notes the paltry fines imposed on employers for violations of labour laws. To quote the report in some detail:

The fine provided for the first offence under Tamil Nadu Shops and Establishment Act, 1947, Tamil Nadu Catering Establishment Act, 1958, Tamil Nadu Industrial Establishment [National and Festival Holidays] Act, 1958, respectively are Rs 25, extendable up to Rs 50 on certain counts. For the second offence, the fines respectively are Rs 250 on certain counts, while no enhancement of fine is provided for the second or subsequent offences on many other counts... Due to this, important benefits and privileges like minimum wages, service cards, leave, weekly rest and other benefits have not reached the workers. This also deprives them of important documents/evidences which are basically required even to prove their employment under the employer concerned... In fact, it is noticed that in many cases employers willingly violate the provisions and readily agree to pay the fine provided for such violations (p 91).

## 3 What Do We Do with 'Unpaid Labour'?

In sum, the burden of our argument is the following: one, within the large, growing, amorphous segment called unorganised economy, the dominant category is that of the self-employed, within which a significant percentage of women work as "unpaid family workers". Two, our data reveal that substantial numbers of women in the prime age group, 15-59 years, still return "domestic duties" as their principal status. Three, those who reported domestic duties as their principal

status were also involved in a number of activities aimed at helping their households save incomes if not to directly earn it. Four, more than one-third of the women reporting domestic duties as principal status were willing to accept work at home, part or full time. Five, the applicability of protective labour legislation to the vast numbers in the unorganised economy is abysmal with effective coverage being even less. Six, labour law administration, as is currently constituted, is part of the problem of ineffective and non-coverage.

Read together, these reports, and their recommendations in particular, raise some disturbing questions relating to the resilience of the "unpaid labour" category that no amount of effective coverage or even effective administration of protective labour legislation can resolve. This, in our opinion, has more to do with the nature and trajectory of economic development and the ensuing employment that this economic growth is generating. Otherwise, it is difficult to account for the sustained manner in which such large percentages of women continue to figure in the category of "unpaid labour", be it "unpaid family labour" or "unpaid domestic labour". While every one of these reports recognises the category of unpaid labour, their recommendations have invariably addressed the existing set of laws that cater to *wage* labour.

At one level, the country as a whole, and feminists in particular, will need to think through the category of unpaid labour to arrive at a set of policies, that needs to operate simultaneously, if the disadvantages that go with being an unpaid labour need to be removed. At another level, taken individually, each of these reports seems to take as given the fact of the continued creation and expansion of the unorganised economy and also the condemnation of large numbers of women to the category of unpaid labour as an inevitable consequence of economic growth.

Further, as long as we continue to designate a number of routine household tasks as women's tasks, public policies will continue to remain gendered. To return to a quote earlier from the NCEUS (2008) Report: "Recognition of *women's* contribution to extended SNA could, and should, lead to greater appreciation of public policies for the *welfare of women*" (emphasis added, p 79). In other words, if the underlying assumptions of public policies are not questioned, the latter could as well contribute to essentialising and reinforcing domestic tasks as women's work, but in the name of enhancing women's welfare.

What does the above lead us to: one, the category of unpaid family labour, currently has no protective labour legislation, since none are applicable to this category. The unpaid domestic labour category can be salvaged to a significant extent, if our gendered outlook on this category is replaced by household and citizenship based protective legislation, that enables every household, and, every household member to be relieved of such chores by effective provision through appropriate public policies, be it water, fuel, dependency care, etc.

Finally, we need to revisit and endorse the call for universal availability of maternal benefits and childcare facilities made by the Shramshakti Report 1988.

In short, this exercise has starkly brought out the fact that, while women's work and women as workers suffer exclusion from protective legislation, a disaggregated analysis of the nature and kind of exclusion calls for a nuanced and focused approach. It has also indicated that at the moment existing protective legislation has no solution to the category of unpaid family labour, while, the unpaid domestic labour category will need a paradigm shift in policy conception if "*welfare of women*" is truly of prime concern.

## NOTES

- 1 This section is based on NCEUS 2008 and NCEUS 2009.
- 2 The NCEUS has engaged extensively with the terms, formal/organised sector, informal/unorganised sector, formal/informal economy, and formal/informal workers (NCEUS 2009: 12-14).
- 3 The Second National Commission on Labour has examined extensively the functioning of institutions responsible for safety of workers in the mining industry, for example. Suffice it to note here the shocking findings of the commission relating to, among other things, the low priority accorded to recruitment and expansion of personnel needed to undertake the task even as the industry has grown by leaps and bounds. "Recently, the Parliament's Standing Committee on Labour and Welfare (13th Lok Sabha) observed (para 2.64 of its report) that during the last 15 years, the size of the mining industry has increased fourfold, whereas the staff component of the DGMS has remained static, and this is grossly inadequate to meet safety operations in mines. The Committee further observed that out of 598 coalmines, the Dept has been able to make complete inspections in only 159 coalmines during the year 2000-01. The Dept has pleaded that due to inadequate staff, it could carry out inspection of all mines only once in four years. The shocking state of inadequacy of staff can be seen from the fact that at present, the Dept has only 130 inspecting officers against the sanctioned strength of 167... It can be observed that the actual number of inspecting officers is about 22% lower than the sanctioned strength. We were informed that this was because of procedural delays in filling up vacancies arising from retirement, etc. In fact, a shortage of 20-30% inspecting officers against the sanctioned strength

normally exists in this organisation. In addition to this, there has hardly been any increase in the strength of inspecting officers since 1971 though the mining industry has increased several times during this period" (ibid: 66 and 73).

- 4 Subsequent to the bifurcation, the Tamil Nadu government issued a government order whereby the labour department was to recruit 60 assistant inspectors of labour (factories) to be deputed to the inspectorate of factories to oversee the implementation of the Factories Act. However, since the government has not created 60 posts of assistant inspectors of factories, the implementation of the Factories Act which includes the notification under Section 85 has not been possible.
- 5 The TN 1998 Report records that an inspector in the labour department enforces 21 labour enactments. This is in addition to the regular administrative work, court work, apart from periodical special drives under Consumer Protection Acts.

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