

**Women's Work Counts
Feminist Arguments
for Human Rights
at Work**

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Radhika Desai has a Ph.D. in Sociology (2000) from Indiana University, Bloomington, Indiana, USA. Her research interests are in gender, political sociology and political economy of development. Over the past 15 years, she has worked on establishing linkages between knowledge and practice and in capacity building of development practitioners, particularly in India. Radhika's work, while focussed on issues of gender and social inclusion, has spanned a broad range of topics in livelihoods, farm and non-farm, including microfinance, enterprise promotion, sustainable agriculture, and watersheds. Other development issues that Radhika has worked on are trafficking of women, health insurance for the poor and marginalised, early childhood care and development, women's unpaid work, institutionalisation of Social Performance Management (SPM), and social impact of microfinance. Additionally, Radhika has provided training and guidance to graduate students, and development workers and consultants, and organisation staff on research methods, data analysis and documentation; and conducted research and written several articles and reports on these wide-ranging topics in development.

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First Published: May 2015

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Published by:

PWESCR (Programme on Women's Economic, Social and Cultural Rights)

D-14, First Floor, Kalkaji, New Delhi-110019, India

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E-mail: pwescr@pwescr.org • Website: www.pwescr.org

Printed by:

Systems Vision, New Delhi.

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Acknowledgement

I would like to thank PWESCR for giving me the opportunity to work on this paper. I thank Priti Darooka, Founder and Executive Director, PWESCR, Prof. Indira Hirway, Swatija Manorama, Shubha Chacko and Sujata Gothoskar for their valuable comments, which helped to enrich the discussions and enhance the publication of the paper.

I am grateful to Bread for the World (BftW) and KIOS Foundation for their financial support for study and its publication. I am also grateful to Anil Kumar and Kriti Tuteja from PWESCR for editing and coordinating the printing and publication of the paper. The publication would not have been possible without the support of Vinay Aditya and his team from Systems Vision in designing and printing.

Foreword

All women work and engage in multiple economic activities significant for their households and national economy. They are involved in a spectrum of work which includes care giving to children, elderly, sick; domestic work such as cooking, cleaning, water and fuel collection; and also in subsistence work for the family farm and enterprises. As primary agents in the livelihood activities, they invest huge part of their time and energy for providing nutrition and food security to their households. However, these vital contributions women make in household sector, farming, animal husbandry, etc. are highly undervalued, unrecognised and regarded as not economically significant. Statistics ignore the magnitude of 'work' undertaken by women right from their very young age. Mainstream economics does not recognise them because neither labour or product or services rendered by women are exchanged in the market. By not acknowledging women's work, a partial picture of the work done in the economy is presented which doesn't recognise women's contribution in securing food security and also to the national economy of all countries.

Invisibility of women's work adds to women's vulnerability and human rights violations. The incongruity of women's experience of burden of work and international data of their lower work participation put the onus on feminist economists and livelihood practitioners to provide evidence of women's work. Article 7 in the International Covenant on Economic, Social and Cultural Rights (ICESCR) obligates the State Parties to the Covenant to recognise the right of everyone to the enjoyment of just and favourable

conditions of work. The objective of this paper, "Women's Work Counts: Feminist Arguments for Human Rights at Work", by Radhika Desai is to analyse the "Right to Just and Favourable Conditions of Work" from women's perspective and to reconceptualise it so as to enable the realisation of the right by women.

The discussion on women's work in this paper begins with the elucidation of the distinctive nature of their work. It narrates in detail women's condition of work and the debates on best ways to achieve equality and socio-economic rights of women. It focuses on two alternative perspectives of women's work. One is a combination of care economy and livelihoods perspectives---two dominant discourses that guide policy, research and action in development. The other is the 'economic' approach to work that dominates the thinking of mainstream economics. It argues that women's 'unpaid care work' is the basis of their discrimination and inequality in the paid work. Women share experience of discrimination and inequality and are at a disadvantage in the economy, because of the entrenched gender stratification of economic structures and institutions in the market and the state, as well as stereotypical understandings of policymakers, bureaucrats, employers and workers, and family members. Hence, we need a more transformative approach to infuse the human rights with women's perspective.

Radhika Desai in this paper argues that given the centrality of women's unpaid care work burden in the set of factors that prevent realisation of the their ESCR in general and of the right to just and favourable

conditions of work in particular, the state has to take immediate cognizance and action addressing the issue of women's unpaid work. The feminist and human rights approaches discussed advocate a radical rethinking of work that begins with women's experience of work in their lives. It calls upon the need for identification of assumptions and values that are not respectful or sensitive to women's experience and needs of work, the examination of gender biases and inequalities that are present in institutions, structures, and actors that are critical to the operationalisation and achievement of rights, the dismantling of the apparatus that supports the gender unequal/discriminatory operationalisation of the rights including policies, institutions, systems and structures and practices that propagate these inequality. The discussions in the paper demand a parallel process of reconstitution of the concept of work and workers, policies to promote the new concept to work, development of systems of accounting to measure this work, institutions and systems to enable the achievement of this socio-economic right to work including the freedom to do unpaid work without suffering adverse economic and social consequences. Radhika has listed out extensively the specific and core obligations of the states to ensure the Right to Just and Favourable Working Conditions. State must be made accountable under the specific obligations to respect, protect, and fulfil the Right to Just and Favourable Working Conditions vis-à-vis the content of the guarantee with regards to remuneration across three dimensions---equality and non-discrimination in

conditions of work and pay, and fair wages, and a decent living for themselves and their families. It should also be made accountable for the various Articles of ICESCR which inter alia confer rights upon the women workers.

This paper by Radhika brings to the fore critical issues that need to be addressed by CDESCR in order for the achievement of substantive equality and realisation of women's right to work and their right to just and favourable conditions of work. It calls the attention of the CDESCR to thoroughly unpack the current composition of 'work' in its instruments and recognise the dynamic nature of work and reconfigure the meaning of work and work-related rights. It also recommends CDESCR to design and incorporate new methods of monitoring and accountability in the Committee so that the states are made more accountable for human rights violations in their jurisdiction and are pressured to enforce human rights principles in the business enterprises as well.

PWESCR (Programme on Women's Economic, Social and Cultural Rights) welcomes the UN Committee on Economic, Social and Cultural Rights (CESCR) engagement to elaborate Article 7 on Just and Favourable Conditions of Work under ICESCR as a General Comment. As a feminist organisation based in the Global South which has been engaged in the work on women's ESCR, PWESCR recognises the criticality of elaborating the General Comment. We hope this paper will provide CESCR women's lived experiences to ensure the General Comment is gender inclusive in all aspects.

Priti Darooka

Executive Director

PWESCR

Introduction

The issue of women's work has been receiving significant attention in recent times. Article 7 in the International Covenant on Economic, Social and Cultural Rights (ICESCR) obligates the State Parties to the Covenant to recognise the right of everyone to the enjoyment of just and favourable conditions of work. The aim of this paper is to analyse the "Right to Just and Favourable Conditions of Work" from women's perspective and to reconceptualise it so as to enable the realisation of the right by women.¹ Women's experience of work and working conditions in their everyday lives and the principle of equality in the human rights framework are the points of departure for the analysis.

The first section in this paper examines women's work in all its complexity. It discusses the current conceptualisations of women's work, the distinctions among the work women do, a discussion on current international approach in measuring work and safety and health of unpaid care workers. Included here also is a section on paid work that discusses the nature of women's employment in the labour market (formal and informal), their remuneration and working conditions. There is also a discussion on the linkage between women's paid and unpaid work in which the role of public provision for unpaid care work is also included. The second section discusses two approaches advocated by feminists and human rights activists and scholars to strengthen the realisation of women's human rights. The third section is devoted to an examination of the Rights in relation to Work in International

Covenant of Economic, Social and Cultural Rights (ICESCR). As the right to just and favourable conditions of work is premised upon the 'Right to Work', it becomes necessary to first interrogate the Right to Work itself--the Article 6 of the ICESCR from a gender perspective. The Right to Just and Favourable Conditions of Work in Article 7 of ICESCR is the second right of ICESCR that is analysed based on the learning from the first two sections of the paper, namely socio-economic rights imbued with women's experience (in this instance, of work). Concluding the discussions in the last section, attention is drawn to a few critical elements that need to be included for realisation of women's Right to Just and Favourable Conditions of Work enunciated in Article 7 of ICESCR.

I. Women's Work

All women work. Women work to produce goods and to provide services. They work to provide food and to provide care. Women work inside their homes and outside it. Women work for the most of their lifecycle. Women often work from dawn to night. Women face a double burden of domestic work and jobs and triple burden of childcare, domestic work and jobs. Women work longer hours than their menfolk. Yet worldwide women's 'work participation' is recorded as lower than men. Women workers are not officially visible! Coterminous with the issue of invisibility of women's work/ers is the lack of rights as workers to many 'working women'.

¹ PWESCR (Programme on Women's Economic, Social and Cultural Rights) welcomes the UN Committee on Economic, Social and Cultural Rights (CESCR) engagement to elaborate Article 7 on Just and Favourable Conditions of Work under ICESCR as a General Comment. We hope this paper will provide CESCR women's lived experiences to ensure the General Comment is gender inclusive in all aspects.

1. Conceptualising Women's Work

Women's work is understood through a gender perspective "recognizing that women stand at the crossroads between production and reproduction between economic activity and the care of human beings, and therefore between economic growth and human development" (Sen 1999 cited in Darooka, et.al. 2011).² The discussion on women's work elucidates the distinctive nature of women's work and the context of social relations in which they do this work. It focuses on two alternative perspectives of women's work. One is a combination of care economy and livelihoods perspectives---two dominant discourses that guide policy, research and action in development. The other is the 'economic' approach to work that dominates the thinking of mainstream economics and is premised on the operation of a market of either labour or commodities.

a) Livelihoods and care economy perspective

The livelihoods scholars have convincingly demonstrated that household livelihoods are achieved as a result

of the paid and unpaid work that men and women engage in. However, while the contribution of paid work is recognised, unpaid work done for household livelihoods remains undervalued. Further, within the unpaid work for household livelihoods, women's work for household maintenance is accorded little value. Women are also engaged in yet another kind of unpaid work---namely unpaid care work. Although none of unpaid care work, except breastfeeding, requires the biological body of a woman, very little of it is done by men due to the existing norms of gender division of labour. Worldwide, without exception, it is women who do the vast majority of unpaid care work.³ According to the report of the UN Special Rapporteur Magdalena Sepúlveda Carmona "heavy and unequal care responsibilities are a major barrier to gender equality and to women's equal enjoyment of human rights" and women caregivers living in poverty "are condemned to poverty" as a result (UN 2013: 2).⁴

The unpaid work women do can be conceptually divided into care work, household livelihood work and economic enterprise work. Unpaid care work is

Table 1: Typology of Women's Unpaid Work

Care Work		Household Livelihood Work ⁵	Economic Enterprise Work
Direct care	Indirect care		
Physical care for the daily living of household members (especially children, elderly and the sick, including bathing, feeding, cleaning their person, and nursing) and work involving engaging in social interaction, learning and leisure activities for child's social, cognitive and psychological development or elderly person's healthy living.	Washing used clothes, cleaning used utensils, giving medicines, keeping oversight, escorting children and elderly outside home, maintenance of the household dwelling for cleanliness and hygiene, etc.	Sourcing the basic inputs for daily survival from outside the home such as fuel, food, and water; transforming raw food into cooked food for household consumption, food preservation, fodder collection, taking care of livestock, etc.	Work done inside or outside the house for family enterprise (non-farm as well as agriculture and agriculture-allied activities)

² Sen, Gita. *Mainstreaming in Finance: A Reference Manual for Government and other Stakeholders*. London: Commonwealth Secretariat, 1999.

³ UNRISD 2010.

⁴ See United Nations. A/67/278. General Assembly 9 August 2012. Sixty-eight session. Item 69 (c) of the provisional agenda* Promotion and Protection of Human Rights: Human Rights Situations and Reports of Special Rapporteur and Representatives. Extreme Poverty and Human Rights.

⁵ This nomenclature is based on the Rania Antonopolous (2009) and my own understanding of livelihoods.

care of persons. It can be further divided into direct and indirect care work; the former is direct care of persons and the latter is associated tasks of person's care (Table 1).

Paid work by women is observed in all the sectors of the economy in a wide range of occupations in the formal and the informal sector and in formal and informal employment.

b) Women's work: An economic understanding

Another approach to classifying women's work is applying the criteria of economic or non-economic, which means assessing if work done generates value-added output. By definition, paid work is remuneration for value-added to the product or service through labour. A close examination of unpaid care work and unpaid domestic livelihood work also reveals its economic dimension. For example, food preparation entails making raw ingredients edible; direct care leads to human capital formation; washing and cleaning transform unclean objects into products available for use. Since there is no exchange of labour or product or services in the market, mainstream economics does not include these as 'work'.

2. Women's Unpaid Work

Unpaid work women do has a distinctive nature. This section discusses its invisibility, issues of measurement and working conditions.

a) Invisibility of women's work

Women's work is invisible to the extent that it does not lead to income generation and does not occur in the conventional place of production---office and factory. Neither women's unpaid care work nor their household livelihood work is counted as economic work. Their participation in income generating activities either as home-based workers in the informal economy or as

family contributors in non-farm enterprises is done from the physical space of the home and in conjunction with household unpaid work. Enumerators miss capturing this work because women may themselves consider their unpaid care work as primary, perceive their work in family enterprise as help, and unless probed may not reveal their contribution to paid work. Women's participation in work for income is limited by their unpaid work burden in the household/family. Thus the invisibility of their work in official/mainstream statistics, economic concepts, policies of state in its simplest form can be traced to the interplay of the two reigning systems of organising/conducting work---the capitalist system which recognises the public spheres of market, state, and household as the sites of production; and the patriarchal system which normatively mandates that the work of reproduction, maintenance and care of members of the household is the primary responsibility of women.⁶

b) Measuring women's work: System of National Accounts (SNA)

The incongruity of women's experience of burden of work and international data of their lower work participation put the onus on feminists and livelihood practitioners and scholars to provide evidence of women's work. In the absence of such data women's demands to rights and entitlements as workers will face stiff opposition.

Currently, the System of National Accounts (SNA) is the internationally agreed standard set of recommendations for measurement of economic activity.⁷ The primary objective of SNA is to have a globally comparable, comprehensive and conceptually sound accounting framework that captures macroeconomic data which can be used for the analysis and evaluation of the performance of the economy (WB 2011). The SNA includes the household as one of the two institutional

⁶ Antonopolous 2009.

⁷ It was last updated in 2008. The discussion here is based on SNA 2008.

units (the other being legal entities) and for SNA purposes specifies the household as one of the five mutually exclusive sectors of institutional establishment for production. In spite of the explicit recognition of the household as a unit, women's unpaid care work and some activities within the unpaid domestic livelihood work are excluded from the category of 'economic activities' in SNA. For example, production of goods and services for the household consumption, home-based pre-harvest and post-harvest operations, and other activities such as grazing cattle, making cattle-dung cakes, collecting fuel, fodder, dairying and livestock rearing, fishing, hunting, cultivation of fruits and vegetables, gathering food from forests, food preservation, collecting and processing of medicinal plants, seed collection and their storage are included in SNA, but unpaid domestic livelihood work such as cooking and unpaid care work are excluded. This is because the production boundary (or the SNA boundary as it is alternately referred to) includes the production of all goods (those sold in the market and those produced for household consumption), but in contrast it excludes domestic and personal services produced and consumed by members of the same household. The rationale for this decision of exclusion is twofold: the need to "prevent flows used for the analysis of market behaviour and disequilibria from being swamped by nonmonetary values"...and "because the decision to consume them within the household is made even before the service is provided" (WB 2011: 4). The International Conference of Labour Statisticians (ICLS) endorses the production boundary of SNA as well.

Five points are worthy of note from the SNA decision on production boundary. One, the SNA does not capture all economic activities/work done in the economy, but only economic activities for GDP calculations that give primacy to market-related production. A substantial portion of women's economic activity is not included in the calculation of the economy. Two, the category, "domestic and personal services produced and consumed by members of the same household" has the consequence of excluding from the market economy work primarily done by women. This in effect is *de facto* segregation of women in the economy (Rania Antonopolous 2009 cited in Hirway 2014). Three, SNA authors by their own admission accept the claim of feminists that contribution of 'unpaid care work' to the market economy is vast. Four, the location of the production boundary is 'arbitrary' and 'illogical' (Hirway 2014; L Goldschmidt-Clermont 1987 and 1989 cited in Hirway 2014); Goldschmidt calls it a patriarchal line that brings in male bias in macroeconomics (Goldschmidt-Clermont 1989 cited in Hirway 2014). Five, despite its limitations, the SNA is an improvement in capturing at least part of the unpaid work women (and men) do. However, as of now only a few countries, mostly of the G-20, have adopted or are in final stages of implementation of the SNA.⁸ And it is the developing countries with the vast majority of households and women performing unpaid non-care work (household livelihood work and economic enterprise work) which are yet to implement the SNA.⁹

⁸ See Peter van de Ven. Progress Report on the Implementation of SNA2008. Global Conference on the G-20 Data Gaps Initiative (DGI). Basel. 25-26 June 2014. <http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCgQFjAA&url=http%3A%2F%2Fwww.imf.org%2Fexternal%2Fnp%2Fseminars%2Feng%2F2014%2Fdgi%2Fpdf%2Fy.pdf&ei=eU7tVL3fL4PUuQS224LgAQ&usg=AFQjCNFdfFFYQSGkh09FKo2yLIF5HCFkfw&bvm=bv.86956481,d.c2E>

⁹ For example in Africa 21 countries have prepared country plans and 15 were to begin the preparation of country plans in 2015. Xiaoning Gong. 2015. SNA Project in Africa. SEEA Training Seminar for the ECA. 2-5 February 2015 UNCC, Addis Ababa, Ethiopia. http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CDwQFjAA&url=http%3A%2F%2Funstats.un.org%2Funsd%2Fnationalaccount%2Fworkshops%2F2011%2Faddis%2FECA-SD2-ENG.PDF&ei=5kntVPP9EYWeugSmw4HoBw&usg=AFQjCNFy4-cUbCna_Wx97MJwXXbf1VBvqQ&bvm=bv.86956481,d.c2E Accessed on Feb 23 2015. More information on international progress on SNA implementation is available at the United Nations Statistics Division website. <http://unstats.un.org/unsd/default.htm>

c) Safety and health in unpaid work

In the home women perform the work to produce, reproduce, maintain and care for the family including male workers; participate as helpers/contributing family members in family enterprise; add value to food produced in farms such as post-harvest processing; work as industry outsourced workers/homeworkers. Women doing unpaid work are considered to have intrinsic rewards because these tasks are part of their social roles in the family. In practice, women as unpaid workers suffer physical burden and emotional stress. The working conditions of unpaid care work do not come under the jurisdiction of law and the drudgery, risk and physical burden of such work adds to their woes.¹⁰ Invisible to law, denied their rights as workers, devalued as non-workers; not having economic resources; and sometimes stigmatised as citizens undeserving of the social provisions provided by the state, expected to be satisfied from the performance of their social roles and made to feel guilty if they don't---these women often suffer psychologically and emotionally in silence.

3. Profile of Women Workers in Paid Work

Worldwide more than half the women workers doing income-generating work are in vulnerable employment. Women also have a higher vulnerable employment rate than men. However, there are qualitative differences among women workers in the developed and developing countries, because of the dissimilarity in the structure of their economies, and the social policies of the state. Women workers from these countries also differ

with respect to their location in the economy (formal and informal),¹¹ and the nature of the employment relationship, both of which in turn have consequences for the nature of their vulnerability.

a) Profile of Paid Women Workers in Developing Countries

Women's employment in agriculture: Although informal economy is often conflated with non-agricultural economy, agriculture employment in fact fits into the current definition of informal economy.¹² Globally, in 2008, the percentage of agriculture sector employment as percentage of women's total employment was at 37 per cent, but in South Asia and in Sub-Saharan Africa this was as high as 70 and 61 per cent, respectively. Further, the share of agricultural informal self-employment in women's total employment is as high as 57 per cent in Sub-Saharan Africa, 50 per cent in South Asia and 35 per cent in East and Southeast Asia (excluding China), but it is a mere 9 per cent in Latin America and the Caribbean. However, much of women's self-employment in agriculture is as unpaid family labour. Agricultural informal wage employment as percentage of women's total employment was 5 per cent or less in all regions, except South Asia where it was 21 per cent (Kabeer 2012).

Wages for women agricultural labourers are the lowest in any sector (Kabeer, 2012). The explanation for low wages is sector- and gender-specific. The agricultural sector is characterised by low wages compared to the non-agricultural sector. Moreover, similar to the

¹⁰ For a discussion of OSH issues in unpaid work see, "Providing safe and healthy workplaces for both women and men." ILO Brochure for the April theme of the 2008-2009 Gender Equality at the Heart of Decent Work Campaign. Issued 23 April 2009. Available at http://www.ilo.org/safework/info/video/WCMS_105060/lang--en/index.htm Accessed on 10 Oct 2014.

¹¹ The word informal is included as part of three distinct concepts in the literature. "The Informal sector "refers to production and employment that takes place in unincorporated small and unregistered enterprises (1993 ICLS); informal employment refers to employment without legal and social protection--both inside and outside the informal sector (2003 ICLS); and the informal economy refers to all units, activities, and workers so defined and the output from them" (Martha Chen, 2012:8).

¹² The informal economy definition now accepted by ICLS includes not only enterprises that are not legally regulated but also employment relationships that are not legally or socially regulated. See Martha Chen. August 2012. The Informal Economy: Definitions, Theories and Policies. WIEGO Working Paper No. 1.

non-agricultural sector, the agriculture labour market is marked by gender bias such that women-specific agricultural jobs such as weeding and threshing are accorded lower skill status and remuneration compared to men-specific agricultural jobs such as ploughing, irrigating fields, etc. Further, due to higher status of men, they earn higher wages than women in even women-specific jobs such as weeding and transplanting!¹³

Composition of women's employment in informal economy (non-agriculture):¹⁴ The labour market regime has its core an employment relationship that is blurred, ambiguous, obscured (by webs of subcontracting) or deliberately disguised. In such an employment relationship, the cornerstone of labour law enforcement is a casualty.¹⁵ The informal economy in non-agriculture comprises well over 50 per cent in most of the countries in Latin America, Africa and Asia. Women are employed in the informal economy in a variety of sectors such as manufacturing, trade, construction and services. However, the percentage of women in the sectors varies by region and even by country. For example, in India the largest percentage of informal workers specified as in non-agriculture are in manufacturing (48 per cent) and 6 per cent are in construction, but in Pakistan 58 per cent of women informal workers are in manufacturing and only 1 per cent are in construction.¹⁶ Women in informal

sector are also found in a variety of occupations such as construction workers, transport workers, domestic workers, street vendors, home-based producers (of garment, bidi, crafts, recycled scrap metal, agricultural processing, food products, etc.), hotel and restaurant workers, textile workers, etc. Workers in the informal economy also work in a variety of 'non-conventional' places such as private homes, open spaces/public spaces, and unregistered premises. Women informal workers are present as employers, regular wage workers, own-account operators, casual wage workers, home workers (often as piece-rate workers), and unpaid family workers. Very few women are employers and they are overrepresented in the category of home workers and unpaid family workers.

Women's employment patterns in informal economy: Women workers' participation in labour force is steadily increasing. However, this increase is not as regular salaried employees in the formal sector, but in the informal economy "on a temporary, casual, seasonal or part time basis, often in home-based activities or subcontracted by intermediaries as part of global value chains" (Kabeer, 2012: 15). Evidence for this is the high percentage of women in informal employment; 83 per cent in South Asia, 74 per cent in Sub-Saharan Africa, 54 per cent in Latin America and Caribbean, 64 per cent in East and Southeast Asia (excluding China).

¹³ Source: India's Troubling Wage Disparities. <http://www.ceicdata.com/en/blog/indias-troubling-wage-disparities>. Accessed on 17 May 2015.

¹⁴ The information here is based on available literature on women's work in informal economy from WIEGO. For example, see James Heintz and Imraan Valodia. Informality in Africa: A Review. WIEGO Working Paper no. 3. September; Martha Chen and Donna Doane. Informality in South Asia: A Review. WIEGO Working Paper No.4. Sept. 2008.

¹⁵ For more on the employment Relationship, see The Regulatory Framework and the Informal Economy. ILO. Available at http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0CCwQFjAD&url=http%3A%2F%2Fwww.ilo.org%2Fwcms/p5%2Fgroups%2Fpublic%2F---ed_emp%2F---emp_policy%2Fdocuments%2Fpublication%2Fwcms_210454.pdf&ei=139dVYPoHtGRuAS-14DwBg&usq=AFQjCNGGQWGNfNoWsFwi4SV0hs8YZsW5tQ&sig2=ZEUBLjPCeZRqYkuD75VG3A&bvm=bv.93756505,d.c2E. Accessed 22 Sept. 2014. Also see, Beyond Protection: An informal Economy Perspective on Labour Law. Liam McHugh-Russell. August 2013. A thesis submitted to McGill University in partial fulfillment of the requirements of the degree of Master of Laws. Available at http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.irec.net%2Fupload%2Ffile%2Fmemoires_et_theses%2F182_E-Thesis_McHugh-Russell_Submitted.pdf&ei=R4FdVaPEMNCouQSzYC4Bg&usq=AFQjCNGz8OL3Q-01EB5lI9tIM6mft5LjZA&sig2=XGVX_b2-SRxsZe_Jt3W9uw&bvm=bv.93756505,d.c2E

¹⁶ Martha Chen and Donna Doane, 2008.

The majority of these women workers are own-account workers and contributing family member. Wage-employment continues to be a source of income for a significant number of women in informal employment, but the proportion of women in paid employment as own-account workers and wage workers varies across regions (Table 2).

Table 2: Patterns of Women’s Employment in Informal Economy across Regions

Regions	Self- Employment in Non-Agriculture (in %)	Wage Work (in %)
Sub-Saharan Africa	61	24
Southeast Asia	47	39
Latin America	--	49
The Caribbean	--	43
Eastern Europe	21	72
South Asia	32	42
China	39	52

Source: Kabeer, 2012.

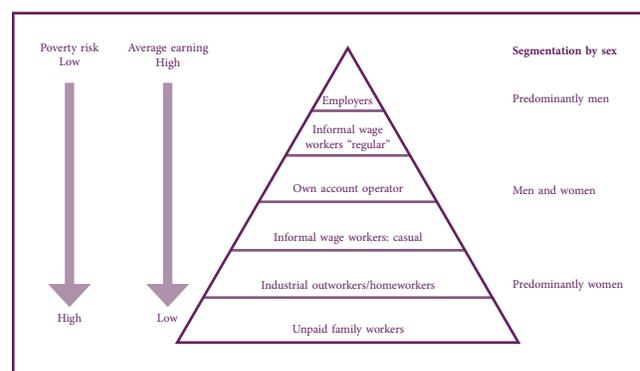
Some of the cross-country differences in women’s participation in income-generating work are a result of the levels of urbanisation in the country and the pattern of incorporation of the countries in global trade networks and production chains. Restrictions on women’s mobility due to the gender norms and practices and differences in levels of education/human capital resources are also a factor as is the existence of sex-segregation of jobs by industry and occupations, which is a clear indicator of structural gender bias in labour markets (Kabeer 2012). A large majority of women workers suffer insecure jobs, poor working conditions, little social security provision, denial of rights of association and other fundamental rights of workers. Thus it is not surprising that a review of International

Labour Organisation (ILO) work on women, gender and informal economy notes, “feminization” of informal labour has served to exacerbate gendered, sexualized, racialized and classed inequalities. As the “weakest links” in global value chains, “women temporary workers fail to reap much of the benefits of the export boom”, and also lose out on social security and protection” (Chant 2008:21).

Just and favourable conditions of work should take cognizance of such gender bias and suggest steps that states ought to take to combat it.

Gender stratification: There exist high levels of gender stratification directly correlated with the markers of social inequality in the informal economy. Chen (2012) has classified this stratification with regard to hierarchy of earnings and poverty risk; the highest rung that has the better quality of jobs, employers, consists largely of men while women are overrepresented as home-based workers and unpaid family workers at the lowest rungs of this hierarchy (Figure 1). Kabeer (2012) makes an important addition that unpaid women workers also are the least likely to be economically empowered as well.

Figure 1: WIEGO Model of Informal Employment: Hierarchy of Earnings and Poverty Risk by Employment Status and Sex¹⁷



¹⁷ Source: Martha Chen. The Informal Economy: Definitions, Theories and Policies. WIEGO. 2012. http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCQFjAA&url=http%3A%2F%2Fwiego.org%2Fsites%2Fwiego.org%2Ffiles%2Fpublications%2Ffiles%2FChen_WIEGO_WP1.pdf&ei=m63tVLvTBY-0uASBgYHICw&usg=AFQjCNEhu5hVf0WIEKAUmnqejC0Re1WCQQ&bvm=bv.86956481,d.c2E. Accessed September 2014.

Even within each category of informal work identified by WIEGO, there exists gender unequal hierarchy vis-à-vis access to resources---financial, technological and legal---and differentials in earnings from work. Inequalities among women workers are also common based on the intersectionality of other markers of social inequality with gender. The evidence for it comes from qualitative and quantitative studies of sectors and enterprises. Studies of women's entrepreneurs show that in the continuum of enterprise from accumulation to survival, women's entrepreneurs are found in greater numbers closer to the survival end (Kabeer 2010). Studies of street vendors also show women's preponderance in lower value goods (Saha 2009).

Safety and health of women workers in non-conventional workplaces: The home serves as the workplace for women for performing different categories of work. As own-account workers working from home, women run petty enterprises such as grocery stores, vegetable stores, stationary stores, cooked meals, sweets and confectionary, fashion stores, etc.; provide services such as tailoring, instruction to children and adults such as in education, arts, sports, cooking, weaving, exercise, etc.; produce goods such as cooked food, woven cloth, embroidered materials, handicrafts, etc. for sale to individuals and traders; and trade goods such as clothing, utensils, home furnishings, fashion accessories, etc.

Women workers having their home as a workplace such as home-based workers are subject to working conditions characterised by inadequate space, poor lighting and ventilation, absence of ergonomic infrastructure, drudgery and manual labour due to use of low-level technology, handling of hazardous material, unhealthy work spaces polluted by the chemical content of raw materials used such as tobacco, chemical agents, pesticides, cleaning agents, dust particles, etc.¹⁸ As a result these workers suffer from ill-health and disease, morbidity, premature aging and even early death.

¹⁸ *ibid*

Women workers working from home using hazardous material also suffer besides general ill-health from gynaecological problems, and pregnancy and maternity complications and their children may be at higher risk of ill-health and disease as well.

Streets are the workplace of vendors, waste-pickers, and sex-workers among others. Women working on the streets are recognised as workers, but being outside the purview of national and international legislative framework they are subject to laws that criminalise their work/activity. These include unsafe working environment due to absence of basic infrastructure such as electricity, and presence of petty criminals and sexual harassment from men such as fellow workers/vendors, and clients; law enforcement officers and clients; unhealthy physical surroundings due to lack of proper sanitation facilities (e.g., no toilet facilities and open drains) and garbage collection; no zoning for separate market/vending area that results in increased exploitation, harassment and violence from law enforcement officials.

2. Profile of Women Workers in Developed Countries

The developed countries are characterised by formal sector and the concepts of 'informal' sector and 'informal economy' are rarely used in studying their economies. The ILO estimates that informal economy constitutes 15 per cent of the OECD economies. The concept of non-standard work, that is the equivalent of 'informal economy', has emerged for the developed economies. "Non-standard work includes, "own account self-employed workers without employees, temporary (or fixed term) employment, also including temporary help agency and on-call contract company workers; and some part-time workers" (Vanek et. al. 2014:15).

a) Women's employment status

In the developed countries, women's participation is higher than men in the category of non-standard work.

Temporary employment: The practice of temporary employment seems to have gained ground as between 1990 and 2008 women's rates of temporary employment were higher than men in 10 of the 28 countries for which data were available for 2008. The percentage was higher than 10 per cent of total women's employment, and in seven countries it was close to 20 per cent. In Spain, Poland and Portugal, temporary employment for women was almost quarter of the total women's employment---31.2, 27.7 and 24.8 per cent, respectively. The high percentage of temporary employment of women reflects the fact that women's employment per se is concentrated in the several service sectors that have a higher incidence of temporary employment than the average; these sectors include households as employers, accommodation/hotels and food services, administrative and support services and arts, entertainment and recreation. This sectoral impact is compounded by the fact that women are employed in the occupation of service workers and clerks within these sectors (Vanek et. al. 2014).

Part-time employment: Women make up the majority of the part-time workers in the industrialised economies and in the OECD countries part-time employment as a percentage of women employment increased from 19.1 in 1990 to 25.3 per cent in 2008. In several OECD countries, women's part-time employment increased significantly over the period 1990--08, but it decreased in a few such as Denmark, Iceland, Norway, Sweden and USA. As of 2008, the part-time employment as a proportion of women's employment was more than 30 per cent in 12 (out of 28 OECD countries), it was highest in Netherlands (60 per cent) followed by Switzerland (46 per cent). Some percentage of women's part-time employment reflects the need of women to cut down on paid work to accommodate their care responsibilities in the absence of public support services for childcare. Sex-segregation of jobs including stereotyping of certain jobs as 'women's jobs' may also lead women to self-select certain kind of jobs. But this is only part of the explanation. Women's segregation into specific jobs can

be explained in part as a result of the sex-segregated distribution of jobs industry- and occupation-wise such that the large proportion of available jobs to women are in specific service industries and in pink- and white-collar occupations. Further, even in these specific service industries and occupations the part-time incidence of women's employment is substantially higher than for the total workforce employed suggesting that other factors may be operating here. Women's experience of being unable to get employment or being denied employment in specific types of jobs, occupations and sectors suggests that gender discrimination is likely to be critical explanatory factor (Vanek et. al. 2014). Just and favourable conditions of work should take cognizance of such gender bias and suggest steps that states ought to take to combat it.

b) Women's wages and inequality in pay

In the industrialised countries, gender inequality in pay persists in spite of a legislative framework that includes laws against gender-based discrimination and for equal pay for work of comparable worth. In Europe, for example, the official pay gap is 17.6 per cent (Eurostat 2007). One of the ways in which gender inequality operates in developed countries is through the employment status. Workers with temporary work contract do not receive the same hourly wage as full-time workers. Further, temporary and part-time women workers do not often meet eligibility conditions such as hours of work, seniority and earning thresholds for all socially administered employment-based benefits such as social insurance and pensions. For example, in "Canada, temporary or contract workers were less likely than fulltime workers to be entitled to employer pensions, health plans, dental plans, paid sick leave and paid vacation leave" (Vanek 2014: 27). The limited access of women to social security including inadequate pensions leads to higher rates of poverty among working age and older women.

Women in part-time employment status receive lower hourly wage than their counterpart in full-time

employment in the US and in OECD countries (ITUC 2011), though there exists EU directive and legislative frameworks at national level in OECD countries to pay equal hourly wages to part- and full-time workers. Yet, except for a few (5) European countries hourly earnings of part-time workers are lower than full-time workers.¹⁹ Women bear the brunt of the wage discrimination experienced by part-time workers. Their part-time employment in service jobs accounts for only part of gender disparity in wages. There are two causes of this disparity and both have their roots in gender bias: Firstly, since the period of industrialisation minimum remuneration for workers has been calculated on the model of ‘male as breadwinner’ of the family according to which livelihood needs of women and children being taken care of from men’s wages. To this day, in spite of women’s widespread participation in the paid economy, the perception of women as ‘secondary earners’ persists and becomes the implicit (and explicit) rationale for lower remuneration for women. Ironically, this perception gets reinforced because of women participate in the labour force in non-standard employment to accommodate the work burden within the home of household livelihood maintenance and care work. Secondly, gender-biased labour market segmentation and occupational segregation. The European Commission’s Experts Group (ECEG) in its report, Gender Segregation in the Labour Market, identifies “covert biases or forms of impediments” as one of the factors for labour market segmentation and segregation.²⁰ Gender discrimination is achieved by micro-level managerial practices in hiring, promotions, performance evaluation, etc. that favour men, structural arrangements such as “closer rungs on ladders in feminised job’s career tracks”; unavailability

¹⁹ As per the data of Eurostat 2006 cited in IUTC 2011.

²⁰ Francesca Betti and Alina Veraschagina. 2009. Gender Segregation in the Labour Market; Root Causes, Implications and Policy Responses in the EU. European Commissions Expert Group (ECEG). European Commission-Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G1.Luxembourg: Publications Office of the European Commission. 2009

²¹ For more information, see Francie Lund and Anna Marriott. Occupational Health and Safety and the Poorest. WIEGO Working Paper (Social Protection) No. 20. April 2011. Also see, “Providing Safe and Healthy Workplaces for Both Women and Men.” ILO Brochure for the April theme of the 2008-2009 Gender Equality at the Heart of Decent Work Campaign. Issued 23 April 2009. Available at: http://www.ilo.org/safework/info/video/WCMS_105060/lang-en/index.htm Accessed 10 Oct. 2014.

of opportunities, “lack of networking resources”, etc.

3. Impediments to Women Workers in Paid Economy

a) Safety and health in workplaces of women workers

Some women work in standard work settings such as factories and offices---the locales assumed to be the setting for ‘work’ in mainstream understandings of Occupational Health and Safety (OHS) framework--but women work in larger proportion and numbers in workplaces other than these. Women workers’ work does not easily fit into the conceptual understanding of ‘occupations’ either. Thus the dominant perspective in OSH of work as ‘occupations’ and workplace safety prescribed as technology solutions does not capture and address the nature of work and workplace of most women workers. The workplaces inadequately understood and covered by the OSH framework are the primarily, home, private households and street and home-based workers, street vendors, sex workers, domestic workers, community care workers, women agricultural workers are a few categories of workers that remain outside such an OSH framework.²¹ The safety and health issues of non-conventional work are outside of economic and labour policy also because of the comparative invisibility of this work and a lack of knowledge, perspective and tools to understand women’s work. However, the ills of poor working condition cannot be laid only at the door of OSH framework. It is the primary responsibility of the state to take the lead to develop a safety and health understanding for the ‘non-conventional’ and ‘conventional’ workplaces in the informal economy put in a regulatory framework, and monitor its compliance.

b) Gender discriminatory practices and patterns in workplace

The preceding discussion on women workers in developed and developing economies demonstrates that in spite of their location in structurally different economies women workers share experience of discrimination and inequality, and are at a disadvantage in the economy, because of the entrenched gender stratification of economic structures and institutions in the market, as well as stereotypical understandings of employers and workers. Women workers face inequality and discrimination because they are women, and by virtue of being women they are considered inferior bearers of labour. Thus skills women bring to the workplace are not valued and jobs in which these skills are deployed are not given due recognition and commensurate remuneration; instead they are classified as unskilled jobs and paid low wages. Such a combination of stereotypical women-associated skills and low wages can be observed in the 'care economy', in the global production chains that hire women for 'nimble fingers', and in seed preservation and post-harvesting and food processing.

The labour markets also show a pattern of depression in wages in previously well-remunerated occupations on women's entry in them in large numbers. In addition, sex-segregated and segmented job markets dominate and stereotypical gender-based understanding of such women as secondary status workers, low technical abilities, natural feminine skills, docile behaviour, low commitment to employment, inability to travel away from home, etc. operate to exclude women from equal access to opportunities to paid work and lock women into low paid, casual, part-time, insecure and dead-end jobs including low-paid jobs in high-skilled sectors (Kabeer 2012).

Women also face barriers in the labour market because of male workers' attempt to exclude women from men's work, because feminisation of industry and occupation is accompanied by devaluation and/or demasculinisation

of the work, and lower pay. Employers may also actively discriminate against women because of their gender-biased perceptions of lower productivity, inability to work in certain settings, for long hours, and perform specific tasks; the onus placed on them to improve workplace facilities such as toilets and resting rooms, or the additional expenditure incurred to provide social protection measures to women such as paid maternity leave and childcare facilities.

c) Women's unpaid care work

Yet another feature that women workers across the developed and developing countries share is their responsibility of unpaid care work.

d) Perceptions in the labour market

The discrimination and inequality in the paid work that women suffer as a result of their unpaid work can be seen in four specific ways: a) their responsibility to the unpaid care work marks them as 'workers with low commitment to the job' who will sacrifice the needs of the 'paid job' to fulfil their unpaid care responsibilities; b) skills women employ in care and domestic livelihood work are categorised as 'natural' in contrast to 'learned' skills and thus they are given lower remuneration for similar or similarly-labelled tasks in the public sphere of paid work; c) women's unpaid care work is understood as lower responsibility to earn a living and provide economic support to the dependents; justifying lower remuneration to them; and d) ironically, women's patterns of job-selection, which show their participation in part-time and/or flexible employment arrangements, and interruptions in employment reflecting their unequal burden in unpaid work in the household are showcased as incontrovertible proof of the gendered assumptions of the employers.

e) Women's time poverty

The gender division of labour is the principal modality of organising women's time on a daily basis. Thus

the primary constraint women face while seeking paid employment because of their responsibilities of household livelihood and care work is time poverty--the total available time and time availability during certain periods of the day. Studies show that in all countries women allocate more time to unpaid care work than men. The authors of the UNRISD study on care note, “despite important variations in demographic, economic and social indicators, gender gaps in the time allocated to unpaid care are large and significant across countries.”

The amount of time women spent in unpaid care work is also strongly influenced by the extent of provisioning of public goods by the state; this is also referred to as overhead time (Antonopolous 2009). This could be infrastructure such as water, electricity, and roads, or social institutions such as childcare centres, medical facilities and old age homes. In countries where state provision of infrastructure, such as good quality roads, water, food and fuel necessary for performing unpaid care tasks, is poor, women have to spend greater amount of time on unpaid care work. Women’s physical burden and time poverty are even higher in such poor households because these households are more likely to suffer from poor public infrastructure and they lack resources to purchase labour-saving technology for household tasks.²²

f) Women and choice in unpaid care work

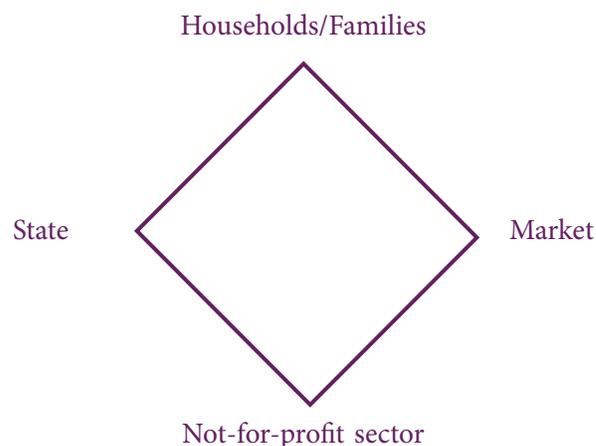
The gender division of labour places the tasks of social reproduction of the family onto women. Although unpaid care provides women intrinsic rewards, it would be incorrect to assume that they choose unpaid care work over paid work. Indeed several studies show that women do not unequivocally choose unpaid care work over paid work, and while exercising this choice they are constrained by the social division of labour. For example, Ghosh (2009, cited in Kabeer 2012) in a study

in India makes the point that in successive NSSO data an increasing proportion of women say they perform unpaid domestic work out of compulsion than choice. A study in Cambodia by Brickell (2012 cited in Kabeer 2012) concluded that women do not do housework from positive feelings about their roles, but rather from “a coercive situation of paternal irresponsibility”. Another study (Das 2006) on why women are not in labour force in India found 93 per cent stating that they did domestic work not of free choice and of these 65 per cent said that they did this work because no other household member was willing to take on these duties.

g) Public provisioning of unpaid care

The amount of women’s care work is largely determined by the extent to which the care responsibilities are assigned to the ‘family’ to the exclusion of other institutions. The role of the family in provisioning care is a result of the complex interplay between four institutions--families, state, market and not-for-profit institutions. This relationship between the four is represented as a ‘care diamond’ (Figure 1).

Figure 1: The Care Diamond



Source: UNRISD, 2010. p. 2.

²² This is widely accepted in the literature of women’s unpaid. For example, see Rania Antonopoulos 2009.

In the absence of state provisioning, it is the availability and affordability of alternative childcare facilities that influences women's choices with regard to employment in paid work. A study in urban Brazil found that not only were women restricted in their capacity to work outside the home in the absence of childcare facilities, but those who did work earned lower incomes. The same study also noted a strong correlation "between utilization of full-time care outside the house and formal sector occupation" (Kabeer 2012: 22).

h) Other factors influencing unpaid work of women

The life-cycle status of women also influences women's labour force participation in paid work. Women with young children whose domestic and care work commitments require greater amount of time and time across various time periods in the day look for the most flexible paid work option. Thus they are "likely to be self-employed (rather than in wage work) often in household activity, than single women or women without children" (Kabeer 2012: 16).

Household income status is yet another factor that influences women's decisions of seeking paid work in the context of their domestic work and childcare responsibilities. Better-off women either invest in time-saving infrastructure or hire domestic help, while poor women have little choice but to take up paid employment for survival. Paid employment unless done within the home exposes the children to harm as women's options of childcare then become leaving children by themselves, leaving them under the cursory supervision of neighbours, or taking them along to the worksite- risking the employer's ire and abuse.²³ In such situations women often find the option of home-based work a solution to their dilemma.

II. Reconceptualising Socio-Economic Rights

1 Women's Economic, Social and Cultural Rights: Two Alternative Approaches

Some feminist scholars argue that the realisation of women's economic, social, cultural rights (including the right to work) must be centred in the human rights principle of equality and non-discrimination.²⁴ Other feminists suggest that a more transformative approach is to infuse the human rights with women's perspective.

a) Equality Approaches

Substantive equality: Although the proponents of equality begin with equality as the anchor in which women's rights should be based they insist that equality should be understood not as formal equality, but substantive equality. Substantive equality does not mean women are treated as the same as men and the socio-economic and cultural rights available to men are merely extended to women. It necessitates that because women in practice are situated differently from men the specificities of women's (and other's marked by social inequality such as physically challenged, elderly, HIV+, ethnic minorities, racial minorities, immigrants, etc.) experience and disadvantage are recognised and accommodated.²⁵

In its articulation of substantive equality for women in General Recommendation 25, the Committee on Elimination of Discrimination against Women (CEDAW) states that the Committee equates *de facto* equality with men as substantive equality. The three pillars of substantive equality, namely equality of opportunities, equality of access, and equality of outcome, have to be an integral part of its content.

²³ See Desai, Radhika. Policy Brief: Quality Day Care Services for the Young Child. ISST, New Delhi. Supported by UNICEF. Unpublished. 2013.

²⁴ ICESCR Articles 3 and 2(2) and ICCPR Article 3.

²⁵ Farha, Leila. Panel Discussion on Women's Economic, Social and Cultural Rights, HRC Session 21 Plenary Meeting 23, 20 Sept. 2012, Sandra Fredman, Engendering Socio-Economic Rights. Legal Paper Series, No 54/2010. University of Oxford among others.

Substantive equality does not imply uniform treatment. CEDAW recognises that given differences in circumstances of men and women to achieve substantive equality, non-identical treatment will be required. Further, such non-identical treatment may have to be extended to women themselves as some may suffer from multiple forms of discrimination. To achieve substantive equality and enable women to enjoy their human rights and fundamental freedoms in the context of past and current discriminations, the CEDAW proposes the instrument of temporary special measures.

Substantive equality with capabilities and care:

Fredman argues that merely extending socio-economic rights to women in a gender unequal society, whose social institutions and structures are themselves gender biased, will not be successful in enabling women to achieve their economic, social and cultural rights. She insists that the principle of substantive equality has to be adopted and practiced in every instance obliterating the discourse of de jure equality because the principle of equality is “agnostic to the content”. Fredman’s concept of substantive equality includes four elements: “the focus on disadvantage, including power relations; the need to bring in structural change; the importance of women’s voice and agency; and the value of dignity” (Fredman 2010: 21). However, she contends that even substantive equality thus reconceptualised is inadequate for achieving equality for women in the economic, social and cultural rights; socio-economic rights also have to be engendered. Such engendering requires their reconceptualisation from bundles of goods to be distributed in different ways to rights “(that) take into account the ways in which goods and opportunities can in fact be enjoyed in the context of actual relationships in which women live” (Fredman 2010: 9-10). She asserts that combining socio-economic rights with the capabilities approach itself, enriched by attention to relationships and care, will engender socio-

economic rights. Such conceptualisation would be more appropriate because capabilities approach by focusing on “whether people are able to be and do what they have reason to value crucially populates the socio-economic rights with content that is meaningful to the individual’s freedom”, and opens the space for demands for state action to remove the barriers [sources of un-freedom] and facilitate the exercise of the right” (Fredman 2010:21). Last but not least, Fredman (2010) notes that socio-economic rights have to operate synergistically rather than cumulatively with substantive equality for the meaningful achievement of change.

By such a reconceptualisation of socio-economic rights Fredman expands the boundaries of the meaning of equality in three ways: a) by anchoring equality in the self rather than with reference to a similar placed male (where in fact the avowed similarity itself is questionable); b) by filling in the content of equality with individual’s meaning of freedom---through this she allows for an emergent individual-specific attainment of equality; and c) by including relationship and care into equality, she infuses the concept with a non-material dimension that is central to human experience of life as social, and especially women’s experience of care and caring in everyday life.

2. Human Rights from Women’s Perspective

Some feminist scholars argue against using the discourse of equality for mainstreaming women’s inclusion in human rights paradigm, although they are in agreement with the endeavour of expansion and redefinition of the content of the human rights. Diane Otto makes the claim that “human rights must also be interpreted from women’s perspectives... the content of each ICESCR right must be understood so that it addresses women’s actual needs when they are interpreted or implemented... gender-inclusive interpretation is itself an important means of achieving substantive equality for women”²⁶ (Otto 2002: 51 cited

²⁶ For her recent work, see by Dianne Otto (author and editor). *Gender Issues and Human Rights*. (Human Rights Law Series #4). Edward Elgar Publishing, UK. 2013.

in Goldblat and Lamarche). In other words, every right must be unbundled to make its content visible; its assumptions need to be identified and analysed; and the right reconstituted with content that is respectful of differences, sensitive to the lived context of daily life of women (and other marginalised/disadvantaged) in their locations understood through the lens of intersectionality, and meaningful for achievement of substantive equality for them (and other marginalised/disadvantaged persons).

Irrespective of the differences, it would not be incorrect to conclude that these two approaches agree that it is necessary to give central place to women's experiences/lived reality as they are currently located and to imbue the socio-economic rights with content that engenders them.

III. The Right to Work in ICESCR and the Right to Just and Favourable Conditions of Work

1. The Right to Work in Article 6 of ICESCR

As the right to just and favourable conditions of work is premised upon the "Right to Work", it becomes necessary to first interrogate the right to work itself from women's perspective.

a) Para 1 of the Right to Work in Article 6 of ICESCR

Point 1 of the Para 1 states: The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

With regard to para 1, the General Comment (GC) 18 on ICESCR Article 6, The Right to Work clarifies in the normative content that "work encompasses all forms of work whether independent work of dependent wage-paid work". Further specifying

paragraph 1 the GC states that the "right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity" (Pg: 1). The GC elaborates that work specified means *Decent Work* which "respects the fundamental rights of the human person as well as the rights of workers". The GC though pushed the *Decent Work* agenda to the Human Rights principle of progressive realisation.

b) Point 2 of Para 1 of the Right to Work in Article 6 of ICESCR

The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

c) The General Comment 18 on ICESCR Article 6, The Right to Work on the topic of Women and Right to Work

It reiterates the commitment to Article 3 to "ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights", the "need for a comprehensive system of protection to combat gender discrimination" and "to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value". Further it specifies that pregnancy should not be a cause for denying employment or loss of employment, and then it goes on to note two conditions---lower education and traditional cultures which "compromise opportunities for the employment and advancement of women".

2. The Right to Work Using a Gender Lens

The paragraphs 1 and 2 of the Article 6 on the Right to Work and the related General Comments are discussed independently. The observations of the

General Comment 18 on Women and the Right to Work are the last one discussed.

a) Para 1 of Article 6

The paragraph 1 refers to the right with regard to its function of “able to gain a living” and the General Comment further elaborates on this right for independent or dependent wage-paid work. Clearly the conceptualisation of work in the Article is ‘economic’. The preamble to ILO Convention No. 168, 1988 reaffirms the centrality of income generation to this definition of work. When we apply a gender lens to this conceptualisation of work we find that the Right to Work fails women miserably, because it does not include women’s experience of unpaid care work and some tasks of domestic livelihood work such as food preparation. Studies show that in all countries women allocate more time to unpaid care work than men. Currently unpaid care work, in spite of its economic value, is not given a monetary value in the SNA, but it is estimated that if a monetary value was to be assigned to it, it would constitute 10 to 39 per cent of GDP worldwide (UNRISD 2010).

The avowed claim of support to dignity and self-esteem rings hollow to women because the Right to Work by espousing an economic understanding of work denies women that very dignity through their work. The lack of recognition of unpaid care work and domestic livelihood work denies the value (monetary and relational) of unpaid care work women do and strips women of the dignity and self-esteem that this work brings to women as care workers. In several instances women homemakers who do not undertake paid work and access the childcare and social security from the state are stigmatised as ‘welfare mothers’ living off the monies meant for their children, or undeserving and too lazy to do a honest day’s work. Goldblatt makes

the pertinent observation that the childcare grants do not recognise that “women mediate social assistance and deliver it on behalf of the state. They claim it, collect it and are then expected to turn it into food, shelter, clothing, education, health and other aspects of a child’s maintenance through their own labours” (Goldblatt 2005: 242 cited in Goldblatt 2014: 32).

The exclusion of unpaid care work from the definition of work itself limits the realisation of The Right to Work of Article 6 of ICESCR by women. A rethinking of the Right to Work from a gender perspective that is based in accommodating women’s experience of work makes it essential that the Right to Work recognise and make visible the ‘unpaid care work’ women do as work. A gender perspective of substantive equality to the Right to Work also suggests the same solution--- make unpaid care work visible and include it in the definition of work.²⁷

Applying the lens of engendered socio-economic rights proposed by Fredman means interrogating the disadvantage to women in current arrangements of work, requiring more equal distribution of domestic work and care in the family; the provision of childcare facilities and benefits in the workplace for men and women employees alike; providing dignity by turning on its head the current practice of devaluing domestic and care work and those who perform this work-- primarily women, and preventing violence, stigma and harassment; and involving the diversity of women marked with markers of social inequality to have a voice in arriving at the range of actions that need to be undertaken to make domestic and care work valued.

A gender-inclusive interpretation of work also requires that the definition of work be expanded to include ‘women’s experience, its contribution to the economy be acknowledged and measured and measures be put in

²⁷ Goldblatt Beth and Lucie Lamarche (2013) identify unpaid care work women do as a critical element of work to advance an understanding of social security and social protection that secures women’s right to social security. See Goldblatt Beth and Lucie Lamarche, “Background document for the Workshop-Interpreting and Advancing Women’s Rights to Social Security and Social Protection’. Draft. International Institute for the Sociology of Law, Onati, 6-7 June 2013.

place to value this work with regard to its contribution towards nurturance, human capital formation and free reproduction of the male and female paid workers of the household.

Not recognising the unpaid care work as part of the content of the Right to Work, Fredman (2010) states, in fact results in “manifold latent discrimination... having to choose between two alternatives [professional career and non-gainful employment] that are not recognised as equivalent in economic terms” (Fredman, 2010: 22). It sends a clear signal to the state, market, family and other non-state actors that this work need not be ‘valued’ and by extension high value need not be placed on care workers outside the family. Critically, the lack of recognition of unpaid care work will reduce women’s freedoms guaranteed by the ICESCR, because women will continue to be heavily constrained to ‘choose’ unpaid care work over paid work and the fewer feasible person-care options would be available to them due to the continued gender inequality in the division of labour in the family, the design of the workplace that excludes childcare facilities in line with men’s needs and experience of work, and the minimal implementation of social provisions for person-care by the state. Effectively women (and men) who value nurturance in the family may be unable to choose this work because of the absence of remuneration for performing such work. An alternative suggested by Fredman (2010) is to build on the Montreal Principles which specifically put the onus on states to recognise the domestic and care work women do and ensure that there is no over-representation and discrimination and of “particular groups of women” in such work; adopt the EU Parliament’s Committee on Women’s Rights and Equality suggestion to include unpaid work as part of the redefined national accounting systems; give equivalence to paid and unpaid work for calculating

social security and pensions; and recognising the skills and training required and acquired in unpaid work as ‘qualifications’ for paid employment.

The other feature in the Right to Work that is disadvantageous to women worker is the relegation of the Decent Work agenda to the Human Rights principle of progressive realisation rather than its inclusion in core obligations. In the context of poor compliance by states with core obligations, the lack of firm commitment linked to a timeline to advance the decent work agenda makes the chances of its realisation look even bleaker. The period subsequent to global economic crisis is a harbinger of things to come for workers worldwide in a scenario of lack of clear commitment to and/or enforcement of workers’ rights specified in human rights treaties. Several countries, including the OECD countries, introduced a range of austerity measures including reduction in public sector employment and cuts in social spending such as for childcare that increased the vulnerable employment of women workers (Bettio et.al, 2012). The impact of global crisis in several developing countries was reduction in formal employment, addition of workers from the newly unemployed to the overcrowded informal employment pool, and loss of jobs in informal sector because of reduced global demand (Horn, 2009, 2010). The absence of accountability mechanisms to tackle violations of Human Rights related to workers socio-economic rights (including Decent Work) denied the workers (formal and informal) and their champions recourse to pressure the state on the grounds of Human Rights obligations. Nevertheless, the understanding of *Decent Work* itself articulated in the GC combined with the advances in legal and human rights jurisprudence vis-a-vis social and economic rights will provide an opportunity for securing workers’ rights in an environment where workers’ rights are increasingly eroded.²⁸

²⁸ For a discussion on the recent advances and retreats on workers’ rights, see Gillian Mac Noughton and Dian F. Frey, “Decent Work, Human Rights and Millennium Development Goals. In Hastings Race and Poverty, Law Journal Vol. 7 No. 2 Pp: 303, 2010. Available at <http://heinonline.org>. Accessed on 19 Sept 2014.

b) Para 2 in Article 6

The suggestions for action for the state to achieve full realisation of this Right to Work are those that are firmly anchored in the mainstream economy. It is evident that little attention has been paid to devise steps specifically for women's inclusion; the approach is one-size-fits-all. Strategies and measures are to be developed to extend to women what is already available to men, implying women's work and women workers are the same as men. Therefore, the unavailability of employment for women in specific sectors and/or occupations, the concentration of women employees in specific job categories, the absence of gender parity in wages, the presence of glass ceiling and the sticky floor---critical factors that shape women's experience of work in a gender unequal arena of work and employment---are never elaborated. Differences between men and woman workers in the home, industry-wise, employment sector-wise and occupation wise are not brought into the strategy; neither are issues of capacities and education levels given due consideration.

c) Special topic in GC 18: Women and the right to work

Women's right to work is interpreted here wholly with respect to equality rather than a woman's independent right to work. The suggestions for achievement of equality seem half-hearted and wholly inadequate. The entire focus is on paid work and the measures suggested by CEDAW for implementing the principle of *de facto* equality do not seem to be clearly thought out. There is no recognition of how gender inequality shapes women's experience of work. The unequal gender division of labour in the household is the one such critical element that constraints women's participation in the paid economy. The exclusion of women's unpaid childcare work from the production boundary which has the effect of marginalising and devaluing women's work is an example of gendered-biased knowledge and institutions. The state which obscures the well-

explicated linkages between women's unpaid care work and the national economy by relegating issues of unpaid care into the realm of social policy is yet another institutional actor that influences/constrains women's participation in work in the market economy. The labour market segmentation and segregation that has its basis in gender-biased understandings of women's skills, capacities, commitment to paid work and career is yet another instance of structures being infused with gender inequality.

3. The Right to Just and Favourable Conditions of Work: Gendered Workers' Perspectives

The Right to Just and Favourable Conditions of Work specifies the individual dimension of the Right to Work in Article 7. It states the following:

"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

a) Applying the gender Lens to Article 7, Just and favourable conditions of work

Mechanisms of gender discrimination operate in the private workspace of the family as well as in public work spaces. Women face inequality and discrimination in wages and conditions of work because of the gender-specific factors that operate “invisibly and routinely through institutionalised forms of discrimination, overtly through actions of powerful individuals and groups, as feedback mechanisms that represent rational responses to pre-existing constraints” (Kabeer 2012: 13).

Understanding how this inequality and discrimination operates in the specific domains enunciated by Article 7 will be the key task. During the process, the provisions of Article 7 will be read in conjunction with Article 3 of ICESCR which affirms the equal rights of men and women and Article 2 (2) of ICESCR which states a guarantee of non-discrimination on the basis of sex among other grounds. Also, as women are engaged in providing livelihoods to the their households through activities other than paid work, the ensuing discussion on Just and Favourable Conditions of Work will not be restricted to paid work/workers in market economy, but be anchored in the understanding of work as part of livelihoods. The three principles of livelihoods of significance here are the following:²⁹

- Right to food which includes food security, food sovereignty and food production. If the goal of just and favourable conditions of work is to enhance capabilities and overall wellbeing, then food security is an important component of it. In its absence adequate remuneration in cash or in kind should ensure life with dignity. In subsistence forms of work, state needs to then ensure direct income support to make sure these households are not food insecure or denied any other right.

- Right to natural resource (land, water and forests): Just and favourable conditions of work should provide access to the means of production for those dependent on natural resources for their livelihood. Communities should have access, control and management of these resources.
- Right to markets: This includes both labour markets where one trades own services and also other markets where one trades one’s goods. Having access to these markets is important. For participation in these markets, one requires education, skills and access to credit. Hence, financial inclusion, banking, etc. are important for women. Skills are needed for upward movement also.

Remuneration in Article 7: The guidance of General Comment 16 inter alia Article 7 on gender equality in remuneration is on equal pay for work of equal value. It offers no suggestion to address gender inequality and discrimination that arise due to the routine operations of the market structures and institutions with deep roots in gender-specific assumptions of women, work women do and abilities of women workers. For example, there is continued inequality in wages between women and men workers in the EU, in spite of legislation on equal pay for equal work and for parity of wages between part- and full-time workers.

This disparity in wages is the result of segregation of women in specific jobs and industries, and unavailability of full-time jobs in sectors in which women seek employment. In other words jobs available to women and men are not the same as men and neither are jobs women have considered of equal worth as men’s jobs. The result is that equality legislation is ineffective in realising women’s equality. Thus it is essential that the state design policies and put in place legislative measures and sanctions to address the issue of

²⁹These principles have been stated by Priti Darooka, Shalini Mishra and others in “Locating Women’s Livelihoods in the Human Rights Framework”, PWESCR Discussion Paper No. 3, July 2011. PWESCR, New Delhi. Also see the PWESCR publication for World Social Forum 2009, “Women and Livelihoods”. Available at http://pwescr.org/women_and_livelihoods.pdf

sex-segregation of industry and occupations. Policies to dismantle the sex-segregation could operate through the route of incentives or mandates to promote specific skill among women; requirements to upgrade women's workers skills and qualifications to ensure upward mobility in the professions, incentives to have minimal proportional representation of women in high-skilled occupations with low female participation; interventions in the education and vocational systems to promote women's greater uptake of 'male' subjects and vice versa; campaigns to destigmatise/value occupations and skills with higher proportion of women, requirements that part-time and temporary jobs do not exceed a certain proportion of any industry, occupation, job category, etc.

Minimum wages: Article 23 of the Universal Declaration Human Rights (UDHR) states that "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented if necessary, by other means of social protection". Following this it can be said that remuneration to the worker is the minimum required to fulfil two criteria: One, it has to be fair---in the sense that it "enables the persons to claim ... their fair share of the wealth they have helped to generate" (ILO: Preamble, Declaration of Fundamental Principles and Rights at Work, 1998); Two, it has to guarantee a person's human dignity.

• Workers in informal employment

Workers in informal employment do not receive wages that at a minimum are 'fair' or grant 'dignity'. Worldwide trends show that in spite of increased productivity "the share of national income going to workers has been falling in USA, Europe, Sub-Saharan Africa, the Middle-East, Latin America and the Caribbean" (ITUC, 2011:21). The low wage share of workers' wages has been accompanied by increased profits. This reflects the

increasing bargaining power of capital versus labour. Informal employment is characterised by ambiguous and unenforceable employment relationship, low pay, poor working conditions, inadequate access to social protection and curbs on workers' rights including those of freedom of association. Under these conditions where the labour contract is unenforceable it is a challenge to realise the right to remuneration that is at a minimum fair and enables decent living as enshrined in Article 23 of UDHR.

Women workers' wages are further depressed, because historically the minimum remuneration for workers has been calculated on understanding of 'male as breadwinner' of the family with livelihood needs of women and children being taken care of from men's wages. While minimum wages of majority of workers no longer ensure a minimum standard of living, the perception of women as 'secondary earners headed by a male head continues' and becomes the implicit rationale for women's location in the bottom of the job structure and lower wages for women. Further, calculations of minimum wage assumed that the worker was male and the social reproduction needs of the worker were provided and serviced by their wives at home without cost. To date, neither minimum wage calculations nor the recent demands for a Floor Wage include such calculations in arriving at the wage in spite of women's high labour force participation, and the findings that women's participation in the paid work is influenced by the availability and affordability of childcare arrangements.³⁰ In the absence of childcare provision, the participation of poor women in paid work is accompanied by harmful arrangements for decent living for the young child or the older sibling (usually female) forced to provide the childcare; the latter is especially true in developing countries.

Decent living: The right to decent living has to be read inter alia with Article 11 of ICESCR, which recognises

³⁰ For an example, see Asia Floor Wage in Celia Mather (ed.). 2009. *Stitching a Decent Wage Across Borders: The Asia Floor Wage*. Asia Floor Wage Alliance. New Delhi.

the right of everyone to an adequate standard of living for him/herself including adequate food (11(1), clothing and housing (11(2) and “continuous improvement of living conditions”. This right when subjected to the principle of equality and non-discrimination of Article 3 and Article (2(2) requires women to have access to necessary resources to either “own, use, or otherwise control housing, land and property on an equal footing with men”.

- **Women workers’ right to housing**

The Right to Housing is of particular significance from a women’s perspective from two dimensions, namely as the space equipped to enable/permit the performance of tasks of unpaid care work, and as a site of safe space in cases of family or community violence. Women’s lack of resource to own house, control access to it and or pay rent due to poor incomes places them at the risk of sexual abuse from owners, local thugs and partners (Farha, 2012).

- **Women workers’ right to food and decent living**

The Right to Food and the Right to Decent Living are linked to women’s worker status in two ways: a) as unpaid care worker wherein she has the primary responsibility to cook meals to feed her family members to keep away hunger, and provide a basket of food items that are sufficient to meet family’s nutritional needs for good health; and b) as producer of food as subsistence farmers. The right to decent living implies that women workers and their households are able to “either ha(s)ve means to produce its own food, or has sufficient purchasing power to buy the food it needs.”³¹ It also includes the optimism of improvements in living conditions, the likelihood of which is low because of the patterns of work of women workers--- as unpaid care workers, interrupted wage-employment, part-time employment and vulnerable employment.

- **Women workers’ right to social security**

The Right to Decent Living as workers also includes inter alia the Right to Social Security mentioned under the Article 9 of ICESCR. The linkage is via two modes: worker status and dignity.³² The General Comment 19 on Article 9 explains it as follows “the right to access and maintain benefits, whether in cash or kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income cause by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and dependents”. Women workers’ right to social security is also linked through UDHR Article 25 (1) which states that everyone has the right to security in the event of unemployment, sickness, disability...or other lack of livelihood circumstances beyond his control. Maternity benefit is women-specific social security right granted to women workers through Article 10(2).

However, women in vulnerable employment, poor wage workers and self-employed have little or no access to maternity-based benefits; thus poor women do not get the required period of rest during pregnancy, and post-childbirth and suffer from poor health and morbidity as a result. For women workers (not in maternity) the right to social security as workers is severely limited due to their vulnerable employment, part-time/temporary employment status, interrupted patterns of work, lack of income to contribute to contributory schemes as own-account workers, etc. and the lack of recognition to women’s unpaid care work as equivalent to ‘paid work’ for social security calculation.

Women’s right to equal opportunity for promotion:

The inclusion of women’s right to equal opportunity for promotion is the specific expression of the Article 3 and 2(2) in Article 7.

³¹ UN Special Rapporteur, Right to Food. Quoted in Darooka, P. Locating Women’s Livelihoods in the Human Rights Framework. 2011.

³² The connection between human dignity and social security is specified in UDHR Article 23.

The public sphere of paid work is undergird by a variety of stereotypical understandings of women workers (and on which are imposed biased perceptions of other markers of social inequality) and presence of powerful gender-biased actors which act as barriers to women's promotions based on 'competence'. This right proactively prohibits the exercise of such biased perceptions and behaviours in the process of job promotions.

Training and skilling programmes need to be put in place to enable women with lower qualifications and skills, but senior and/or competent in their jobs to have opportunities for promotion. The training schedules, periods and timings should be finalised after consultation with women (and men) employees so as to enable them to juggle household and office responsibilities. The requirements for promotions have to be reformulated considering the gender unequal work experience of women, and women's skills hitherto assumed as 'natural' have to be remunerated and given recognition in performance and pay. Temporary measures may also be put in place. The workplace has to be studied using the gender perspective identifying the gendered biases in the workplace such as in operational practices, work timings, work processes, informal and formal meets in institutional processes, and in systems and practices of management including performance management. Incentives and punitive sanctions must be put in place to promote gender-sensitive systems, processes, activities and actions.

- **Occupational safety and health in workplaces**

The discussion of women's workplaces has demonstrated that women work in a range of spaces that are not captured under the standard definition of a workplace. Women's work also does not fit into occupation-based classification in the Occupational Safety and Health (OSH) framework. The focus on technological solutions to reduce impact of occupational hazards does not

speaking of the needs of women workers. Home-based workers, street vendors, sex workers, domestic workers, community care workers, women agricultural workers are a few categories of paid workers that remain outside such an OSH framework. Unpaid work such as caring for children, elderly, sick, and healthy adults and providing domestic services for reproduction of the household members such as cooking, cleaning, washing and childcare and care of the sick and the elderly also has health risks for the women workers themselves. Violence in the workplace as monitoring and disciplining is a marked feature in the global value chains of factory-based production that needs immediate attention. Sexual harassment too is not an infrequent risk women face in the workplace. This suggests that there is an urgent need to develop an OSH framework that takes specific cognizance of the diverse experience of working conditions, safety and occupational hazards of women workers.

The renaming of OSH as workplace safety and health may be the first step towards inclusion of women workers in the OSH framework.³³ An equally important step is the development of a regulatory regime for the diversity of workplaces including 'private households' in which women work and the elaboration of measures of correction, restitution and compensation for workplace safety and health under the variety of workplace and employer--employee arrangements in the context of globalisation of production. Last but not least, the OSH framework needs a thorough interrogation from a gender perspective---the meaning of health and safety for women workers, paid and unpaid, extending beyond the focus of pregnant women and lactating mothers.

- **Women's right to rest, leisure, and working hours**

There needs to be labour regulation and labour inspection in place to ensure that women workers in informal employment have access to fundamental rights of workers in the workplace such as rights with

³³ A legislation in Australia has already made the change.

regards to working hours, rest, and overtime. Women workers in global value chains such as garments are forced to work in regimes of workplace production and management that deny them rest and leisure and force them into working for longer hours than is either desired or desirable for their health and safety. Strict global curbs on such practices of non-state players have to be put in addition to compliance from state to ensure these minimum rights of women workers are met.

Women workers also need to have established rights to rest and leisure because of the demands of menstruation, pregnancy, post-partum condition and other conditions related to child-bearing. Lactating and young mothers need to be guaranteed flexible working hours if desired to enable rest and leisure to cope with the dual burden of childcare and paid work. Similarly women working as unpaid workers engaged in production of goods for household use and as helpers in family enterprise, as well as paid workers working either in the homes or outside need to get special attention as they suffer acute time poverty because of the triple burden of household livelihood work, care work and paid or unpaid enterprise work.

IV. Towards an Engendered Right to Just and Favourable Conditions of Work

1. Reformulating Just and Favourable Conditions of Work from a Gender Perspective

Given the centrality of women's unpaid care work burden in the set of factors that prevent realisation of the women's economic, social and cultural rights in general and of the right to just and favourable conditions of work in particular, the state has to take immediate cognizance and action addressing the issue of women's unpaid care work. In effect, the feminist and human rights approaches discussed earlier advocate a radical rethinking of work that begins

with women's experience of work in their lives. It requires identification of assumptions and values in these rights that are not respectful or sensitive to women's experience and needs of work, the examination of gender biases and inequalities that are present in institutions, structures, and actors that are critical to the operationalisation and achievement of that right, the dismantling of the apparatus that supports the gender unequal/discriminatory operationalisation of the rights including policies, institutions, systems and structures and practices that propagate these inequality. A parallel process of reconstitution of the concept of work and workers, policies to promote the new concept to work, development of systems of accounting to measure this work, institutions and systems to enable the achievement of this socio-economic right to work including the freedom to do unpaid work without suffering adverse economic and social consequences would have to be put in place.

State action on 'unpaid care work' including direct care of persons needs to proceed in a transformative manner based on the redefinition of work. One important step towards this valuing of domestic and care work of women would be to redefine the category of work in national accounting systems such that domestic and care work is included within its definition. Another step is for the state to have available, accessible and adequate child-care facilities for families near the residence and the workplace irrespective of the women's labour force participation status. As part of removing the constraints imposed on women to 'choose' between paid work and domestic work and childcare, working hours for full-time work itself could be reduced, made flexible and parity brought in not only in pay between workers with varying amount of work hours, but also in availing the training and upgrading to get promoted in the workplace. Social provisions such as social security and pensions, earlier based only on participation in paid work, should be made available to persons in unpaid care work calculating their work in the same way as paid employment. The profession of 'caring for persons'

should be given a valued status with the state taking the lead in remunerating care economy workers employed by it on par with other 'high skilled' workers. Regular training and skill upgradation should also be made available for professional advancement of employees in the care economy.

In parallel, the state should expand the content of the right to just and favourable conditions of work from the perspective of women as they are presently located in the context of relationships of care and responsibility. This requires the state to develop a gender-specific strategy that acknowledges the actual needs of women in taking care of their responsibilities, the constraints of unpaid care work on women's choice to do unpaid care work and paid work, the support they require from men, employers and state to undertake unpaid care work and facilitate their entry into the labour market. However, the thrust of the guidance of General Comment 16 is on achieving equality by 'addressing gendered social and cultural prejudices', 'providing for equality in the allocation of resources' and 'promoting the sharing of responsibilities in the family, community and public life'. It does not bring into the discussion the necessity to make changes in the structures and institutions in the public sphere which have emerged as a result of these gender understandings that mark women as inferior.

2. Making States Accountable

a) Specific obligations

State must be made accountable under the specific obligations to respect, protect, and fulfil the Right to Just and Favourable Working Conditions vis-à-vis the content of the guarantee with regards to remuneration across three dimensions---equality and non-discrimination in conditions of work and pay, and fair wages, and a decent living for themselves and their families. It should also be made accountable for the various Articles of ICESCR identified above which inter alia confer rights upon the women workers. At the same time, Francie Lund's timely caution that the

overemphasis on state--citizen axis must be curbed and worker--employer axis has to be made once again visible in the discourse and action on workers' rights needs to be given due attention. In the discourse and action on Social Justice for Fair Globalisation 'employers and owners of capital should be held responsible for contributing to social benefits' (Lund 2009: 2).

Specific obligations of the states are as follows:

- The states shall guarantee women workers' fundamental rights as specified in the ILO Declaration of Fundamental Principles and Rights at Work (1998)
- The states shall effectively implement the Articles 3 and 2(2) inter alia Article 7 using the concept of substantive equality engendered with women's work experience
- The state shall recognise 'unpaid care work' as work and give women unpaid care workers entitlements that have been granted to other workers in an equal and non-discriminatory manner
- The state shall take steps to extend fundamental rights of workers guaranteed by ICESCR to categories of women workers hitherto not included
- The state shall take steps for the progressive realisation and effective implementation of labour regulations in formal and informal sectors
- The state shall enact legislation to ensure equality, non-discrimination and safety from violence and sexual abuse in the workplace
- The state shall enact/extend to all women workers legislation with regard to the rights to maternity specified in ICESCR Article 10 (2)
- The state shall develop the infrastructure and human resources required for the establishment of childcare centres based on the principles of availability, accessibility and adequacy
- The state shall promote the study of women's work and workplaces and based on the learning develop

safety and health and labour regulations and their monitoring mechanisms.

- The state shall rescind all laws that disallow or impose restriction on individual women's right to inherit, own, rent, lease property, land, technology and other assets and resources as individuals.

b) States' core obligations

- The state shall on an immediate basis enact legislation for a Wage Floor that assures a decent living to the individual worker and his/her family
- The state shall develop a policy on childcare in consultation of women from a diversity of backgrounds and develop a plan for its phased implementation
- The states shall guarantee women workers' fundamental rights as specified in the ILO Conventions and in the ILO Decent Work Agenda, including, but not limited to ILO's Declaration of Fundamental Principles and Rights at Work (1998)
- The states shall effectively implement the Article 3 and 2(2) inter alia Article 7 using the concept of substantive equality engendered with women's work experience
- The state shall recognise 'unpaid care work' as work and give women unpaid care workers entitlements that have been granted to other workers in an equal and non-discriminatory manner
- The state shall enact legislation to ensure equality, non-discrimination and safety from violence and sexual abuse in the workplace
- The state shall enact/extend to all women workers legislation with regard to the rights to maternity specified in ICESCR Article 10 (2).

3. Broadening Human Rights Accountability

In light of the widespread violation in practice of women's right to just and favourable conditions of

work and the mandatory obligation of state to achieve equality and non-discrimination in the enjoyment of ESCR, two proposals have been put forth to improve realisation of ESCR in general and women's rights in particular.

a) Establishing gender-equality accountability

One suggestion by Leila Farha is that the Human Rights Council (HRC) should establish a Gender Focal Secretariat which would be entrusted with the mandate to promote and monitor state actions on achieving substantive equality for women in the ICESCR. The HRC should also develop an accountability mechanism on gender equality within the Universal Periodic Review (UPR).³⁴

b) Holding economic policies accountable

Currently the reach of the human rights instruments is limited by the non-scrutiny and unaccountability of macro-economic policy impacts on the realisation of the human rights---social, economic, cultural and political. However, it is undeniable that the achievement of ESCR depends on the intersection of group discrimination and the specific effects of the economic and social policies of the state. Hence, focusing only on state action in the spheres of the social policy to achieve human rights is ineffective. Balkrishna et.al. propose bringing the state's economic policies under the ambit of human rights. The approach suggests a focus on non-negotiable features of human rights as follows:

- The fundamental tenets of human rights law
- The three obligations with respect to social and economic rights, namely obligation to respect, obligation to protect and obligation to fulfil
- Guidelines for realisation of rights
 - ❑ The requirement of progressive realisation
 - ❑ The use of maximum available resources
 - ❑ The avoidance of retrogression

³⁴ See F.N. 17

- ❑ The satisfaction of minimum essential levels of economic and social rights
- ❑ Equality and non-discrimination
- ❑ Participation, transparency, and accountability.

This approach which throws light upon the connections between the various types of economic policies and human rights issues would make available evidence and analysis necessary to make states accountable to human rights obligations.

c) Making non-state actors accountable

The non-state actors are not signatories to the ICESCR and it is the duty of the state to respect, protect and fulfil the human rights and fundamental freedoms of its citizens and other individuals under its jurisdiction. However, it is the State that has to ensure that the non-state actors, individuals, businesses enterprise, trade unions, voluntary sector organisations, religious groups, etc., do not violate the human rights of the other non-state and state actors.

With regard to the right to work, the state obligation to protect, respect and remedy to ensure human rights becomes especially important, because several non-state actors are employers who have an obligation not to violate the fundamental rights of workers including decent work and respect for the physical and mental integrity of the person. However, fundamental rights of workers in the informal economy are not respected by employers and the state is a mute spectator. Even worse sometimes is that the state does itself not provide for minimum wages, hires staff on a contract basis in the informal employment and violates basic requirements of safety and health in work place. Business enterprises may also get into conflict and either perpetuate human rights violation on the communities--these may include grabbing of lands which are the source of livelihoods for the local people, polluting the sources of water, causing soil quality loss, destruction of habitat and/or ecosystem, etc. and increasing the difficulty in obtaining livelihoods.

A review of recent state policy and action at the international level shows that instead of making business enterprises accountable for their actions, the states in pursuit of economic growth often lower the threshold of human rights and actively aid and abet the non-state actors. The invitation to businesses to invest in Special Economic Zones (SEZs) notified in areas where the fundamental rights of the worker ranging from minimum wages to prohibition to form associations for workers' rights is a case in point. The plight of women workers in global chains of garment production is a stark example of the state actors not fulfilling its obligation to protect, respect and remedy human rights violations. Similarly, the state has sold agricultural and non-agricultural land for mineral and fossil-fuel extraction and displaced several thousands from their livelihood source.

It is necessary for the Committee to make states accountable for non-compliance with the guiding principles for human rights or for the international bodies to create an institutional mechanism similar to the International Criminal Court to prosecute non-state human rights violators.

d) Way forward: Suggestions for policy and action by CDESCR

The study of women's condition of work and the debates on best ways to achieve equality and socio-economic rights has brought to the fore critical issues that need to be addressed by CDESCR in order for the achievement of substantive equality and realisation of women's right to work and their right to just and favourable conditions of work.

The CDESCR needs to articulate its understanding of 'equality' in Articles 6 and 7 more clearly. The understanding of equality needs to not only reject *de jure* equality, but question the adequacy of *de facto* equality for achievement of socio-economic rights of women in light of the recent critiques of it. Two other even more transformative reformulations of 'equality'

that could be used would be Fredman's suggestion of "combining of substantive equality with the capabilities approach strengthened by attention to relationships and care" or Dianne Otto's suggestion of "gender-inclusive interpretation".

The CESCER needs to thoroughly unpack the current composition of 'work' in its instruments. While the para 1 of Article 6 is broad and general to encompass within the variety of paid work, the discussions and articles themselves do not capture and include the range of women's experience of work. Specifically, the conceptualisation of 'work' in its current formulation does not extend to the unpaid care work and the household livelihood work that women perform. It parallels the SNA production boundary and excludes a large of daily work that women do and around which they organise their time. The non-recognition of work women do by CESCER is in effect a denial of the women's right to dignity and self-esteem through their work as well as the devaluation of their person and the work they do.

A more concrete consequence of lack of cognizance of unpaid care work as a specific category of work leads to gaps in addressing women's right to just and favourable conditions of work with regard to the elements of the Article 7. For example, women face time-poverty and have to forego the periods of rest and labour. Women get disproportionately employed in the care economy and the remuneration given, especially for those employed in the informal economy, is not sufficient to obtain decent living. Eliding unpaid care and domestic livelihood work from the ambit of 'work' in the market economy also leads to women's exclusion from the mainstream market economy, though the work they do has strong linkages with the outputs of the market economy. It also allows the states to abdicate their responsibility of provisioning of child and elderly care as social good, and the employer as a worker's right. Women also continue to subsidise the market for the reproduction of its labour force at the cost of

their earnings, and health. The CESCER needs to pay specific attention to the way in which 'unpaid work' is recognised, valued, remunerated, and included in social protection measures.

The CESCER needs to recognise the dynamic nature of work and reconfigure the meaning of work and work-related rights in light of the fact that current understanding of employment relationships are often not based on an enforceable labour contract that was the hallmark of the industrial period. For the vast majority of workers, especially women workers, the labour contract is not a reality because of their employment in the informal economy. Thus critical issues identified in the literature of informal economy are the absence of employer--employee relationship, the erasure of employer responsibility by sub-contracting and/or by transforming the employment relationship into a self-employment/entrepreneurship, the absolving of employer of responsibility for OSH in home-based work, and the lack of remuneration for decent living. All these need to be brought into the discussion on the Right to Work and Right to Just and Favourable Conditions of Work.

The need of the hour is to undertake a radical rethink of work, and even to consider livelihoods as work, especially in the light of the fact that right to work does not translate into decent living for a vast majority of persons. Also CESCER should propose that states design policies and develop tools for capturing the working conditions of informal workers and for monitoring the compliance of these conditions with the core obligations and progressive realisation. One such endeavour could be the proposal for states to design Workplace Health and Safety Projects for understanding the work in non-conventional spaces, where women informal workers are located in large numbers. Another could be the guidance to states to develop policies and laws for increasing access of informal workers to public spaces. For example, a suggestion for states could be development of policies on zoning laws and access

to commons so that human rights of street vendors and cattle grazing communities, respectively, would be respected.

The CESCR needs to go beyond worker characteristics and working conditions and bring in two additional factors in the discussion on remuneration: a) the cost of worker and worker family's reproduction; and b) a linkage of wages to profits generated by firms/employer. The exclusion of worker and worker family's reproduction from remuneration discourse leads to systematic underestimation of 'minimum' and 'living' and 'fair' wage. It also leads to systematic low valuation of 'care work'---paid and unpaid. The current recognition that minimum wages have dived lower while profits have zoomed increasing disparities in wages between workers in the top rung and those at the bottom and widening inequality at national and global level urges the inclusion of the social justice thread in this Human Rights dialogue.

CESCR could design and incorporate new methods of monitoring and accountability in the Committee so that the states are made more accountable for human rights violations in their jurisdiction and are pressured to enforce human rights principles in the business enterprises as well. Bringing macroeconomic policies under the purview of the Committee could be considered. This would have the effect of deterrence on the states to not engage in actions that violate the human rights of its citizens and its workers by setting up extractive industries in tribal lands and SEZs to attract foreign and domestic capital in manufacturing. These might encourage socially progressive states to provide incentives to enterprises that provide better working conditions, for example, which are in line with business and human rights guidelines. All these also provide for an indirect role of the state to create an environment for better conditions of work.

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