An Ode to Altruism

How Indian Courts Value Unpaid Domestic Work

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Feminists have demonstrated how the invisibility and lack of recognition of unpaid domestic and care work result in gender inequality and women's disempowerment. Discussions of the role of law in reinforcing this invisibility is limited and focused on family law. This paper shall look at tort law, namely a review of compensation awarded to the dependents of homemakers, between 1968 and 2019, under the Indian Motor Vehicles Act, 1988. The growing recognition of women's UDCW by Indian appellate courts, culminating in an influential Supreme Court decision in 2010, is traced. This "wages for housework" jurisprudence is then marshalled to probe the redistributive function of tort law.

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The deceased Maya Devi was, by all accounts, a reproductive superwoman. She was a 25-year-old mother to a minor child at the time of her death in a motor accident and was pregnant in 28 weeks. She worked as a maid, doing domestic work in four households. She helped her husband to milk the cows and buffaloes, and carried out agricultural work on their farm (*Rakesh Kumar and Anr v Prem Lal and Ors* 1995). Maya Devi is only one of the hundreds of homemakers[1] and roughly 1,50,000 men, women, and children, who die every year on Indian roads. This paper is about how their dependents petition the courts for compensation and the grounds on which the courts accept, reject or modify their claims for compensation.

Based on my analysis of hundreds of such cases that have come to the appellate Indian courts since the 1960s, I assess how Indian courts value women's reproductive labour.[2] In other words, how is the unpaid labour of homemakers, homeworkers and mothers recognised by an area of private law, namely tort law. Lessons from the judicial archive can, I argue, help reimagine the recognition of women's unpaid domestic and care work (UDCW), now memorialised by the Sustainable Development Goals (SDGs), and contribute to the debate on female labour force participation rates (LFPR) while generating economic gains for nearly 300 million Indian homemakers.[3]

Law and Women's UDCW

UDCW has long captured the imagination of feminist theorists. Marxist, socialist and autonomous feminists have debated domestic labour and wages for housework in the 1970s (Kollontai 1977: 252; Vogel 1995: 57), chronicled the international sexual division of labour and housewifisation in the global south in the 1980s (Mies et al 1988), and studied global care chains since globalisation in the 1990s (Yeates 2004). Post-structuralist feminists have rendered visible "life's work" (Mitchell et al 2004), while liberal feminists have grappled with workplace equality and the intractable messiness of "work-life balance" (Slaughter 2016).

The original focus on UDCW performed at home has, however, received a new lease of life with the adoption of the SDGs, particularly SDG 5.4 which requires that UDCW be recognised, reduced and redistributed through the provision of public services, infrastructure, and social protection policies, and the promotion of shared responsibility within the household and the family as nationally appropriate. As numerous international organisations present the burdens of UDCW as a barrier to

female LFPR, feminist economists have offered more nuanced explanations to argue for better measurement of the high levels of both paid and unpaid work that women are, in fact, doing (Deshpande and Kabeer 2019: 2). Yet, better measurement also relies on the conventional economic notion of the gross domestic product as the true indication of the value of a country's economic output.

Meanwhile, occasion for state recognition of women's UDCW within the law arises at two points of rupture, namely at divorce and upon death of a homemaker, both governed by two areas of private law—family law and tort law, respectively. In this paper, I focus on the robust tort law jurisprudence vis-à-vis the recognition of UDCW developed by appellate courts under the Motor Vehicles Act (MVA), 1988, over a 50-year period between 1968 and 2019 (when the MVA was amended). Through a creative interpretation of common law principles, the Indian courts have recognised UDCW, producing significant symbolic and material gains for homemakers and their dependents. Indeed, one could argue, that the law practically realised "wages for housework," a slogan that animated feminist struggles in the 1970s (Federici 2012; Barbagallo 2019).[4]

I mobilise the state's recognition of UDCW at moments of disruption to argue for its recognition in normal times. In tracing the rhetoric of altruism that informs judicial thinking, I also shed light on exclusionary tendencies they generate and conclude by analysing the redistributive effects of the recognition of UDCW.

Introducing Tort Law

Tort law is an area of private law, which provides for compensation to be paid to victims of personal injury. Tort law in India draws on English common law principles of liability based on fault. Motor vehicles law supplements this common law through statute (that is, the MVA). The rapid increase in the use of automobiles (and therefore, accidents) as well as a poor and largely illiterate population which struggled to enforce the MVA for adequate and timely compensation, meant that Parliament had to amend the MVA to introduce principles of no-fault liability in 1982. This was followed up with a crucial amendment in 1994 in the form of Section 163A, which allowed for compensation on a no-fault liability basis for those earning less than ₹40,000 a year and where compensation was awarded according to a structured formula. The Supreme Court held that Section 163A was effectively "a social security scheme, it is a code by itself" (*Deepak Girishbhai Soni and Ors v United India Insurance Co Ltd* 2002: para 39) for poorer victims to acquire compensation without protracted litigation to establish the driver's fault. Indian courts have, thus, always recognised the redistributive function of tort law.

Courts, typically, award damages for pecuniary and non-pecuniary losses under tort law. Pecuniary or economic losses include the loss of income, loss of dependency, loss of estate, loss of services to family, medical expenses, and funeral expenses. Non-pecuniary losses include pain and suffering, pain and shock, love and affection, loss of foetus, shock and agony, loss of expectation of life, loss of amenities of life, and loss of consortium. I focus on pecuniary losses, particularly, the loss of services to family and the loss of income.

To determine compensation, courts estimate the multiplicand (based on loss of earnings and income of the deceased), and deduct a third of the income towards expenses for the upkeep of the deceased, had they been alive. Then, the courts identify a suitable multiplier based on the victim's age at the time of the accident to determine the compensation. The lower the age of the victim, the higher the multiplier and higher the age of the victim, the lower the multiplier. For claims under Section 163A, the Second Schedule listed the total compensation amount using different bands of multiplicands and multipliers. Where a person was not earning an income, clause 6 of the Second Schedule prescribed a notional income of ₹15,000 per year and in the case of a spouse, a third of the income of the earning/surviving spouse. To this were added general damages listed under the Second Schedule (₹2,000 for funeral expenses, ₹5,000 for loss of consortium [if beneficiary was the spouse], ₹2,500 for loss of estate, and medical expenses up to ₹15,000).

Trajectory for Recognition of UDCW

The most significant element of compensation for a deceased person is their loss of income. This is relatively straightforward for an employed worker in the formal sector with proof of income. For homemakers, however, in the absence of such proof, insurance companies often disputed awards for pecuniary loss, claiming that they had no income. To recognise the homemaker's reproductive labour as valuable, courts had to both expand the heading of compensation based on loss of services to family, and use novel methods to measure such loss. This was complicated by the fact that the categories of "housewives" and "homemakers" are, in fact, unstable, if not illusory.

The cases I studied all revealed that women, very often, did some kind of paid work. Many were in rural areas and this is reflected in the case law. Their labour, based on the case law, can be categorised as follows: (i) women performing reproductive labour for their own family; (ii) women performing reproductive labour for their family, and paid non-reproductive work for the market outside the home (such as sweeping, operating a telephone booth, cultivating and selling vegetables, milking cows, working with a non-governmental organisation, etc); (iii) women performing reproductive labour for their family, and paid reproductive work outside the home (as domestic worker, schoolteacher, beautician, etc); and (iv) women performing reproductive labour for their own family but also paid "productive" work within the home (for instance, embroidery, tailoring, stitching for a garment factory, tutoring, bookkeeping for family business, etc).

'Loss of Services to Family'

The category of the loss of services to family was first considered by the courts in 1968 (*Abdulkader v Kashinath* 1968). The Bombay High Court held that a husband was entitled to compensation, representing the money value for the services

which his wife rendered and for which he now had to engage servants. In 1982, the Punjab and Haryana High Court held that the expense for loss of services to the family would be calculated by estimating the replacement costs for a maid and factoring in the costs of her lodging and boarding and increases in her salary over the years. In *Sunny Chugh v Darshan Lal* (1985), the Punjab and Haryana High Court referred to the English treatise Kemp (1975) to identify the various heads under which replacement costs could be awarded on the death of a homemaker.

Subsequently, in the landmark case of *Rajam v Manikya Reddy* (1988), the Andhra Pradesh High Court held that the term "services" had to be understood broadly. The loss of services to family was larger than just the replacement costs, as no substitute could be as economical as a homemaker. To begin with, when a replacement is found, the family would have to incur accommodation costs. Even the husband may have to give up his job due to a sickly child (following *Mehmet v Perry* 1978), in which case, loss of his income would have to be factored in. The loss of love and affection had to be part of the loss of services, and courts must construe services broadly on par with English law.[5]

For this, the Andhra Pradesh High Court relied on *Regan v Williamson* (1977), where Judge Watkins observed:

> the word "services" has been too *narrowly* construed. It should, at least, include an acknowledgment that a wife and mother does not work to set hours and, still less, to rule. She is in constant attendance, save for those hours when she is, if that is a fact, at work. During some of those hours, she may well give the children instructions on essential matters to do with their upbringing and, possibly, with such things as their homework. This sort of attention seems to be as much a service, and probably more valuable to them, than the other kinds of service conventionally so regarded. (para 4; emphasis in original)

The Andhra Pradesh High Court then noted that

> Several High Courts in India have, no doubt considered the basic principles of estimating the loss of "services" of the homemaker. But the concept of giving a wider meaning to the word "services" has not been considered in the manner in which the same has come to be considered in England. For that matter, the "love and affection" or care bestowed by an Indian homemaker to the children and husband is definitely not inferior to that of her English counterpart. There is no reason as to why the wider meaning given to the word "services" in England should not be adapted in India. (para 9)

The same court further elaborated,

> Thus, except in the last-mentioned case, where the loss of love and affection was considered along with loss of consortium, the Indian courts have not chosen to consider the loss of love and affection to the children and to the husband as part of the pecuniary loss awardable together with loss for services. As pointed out, however, in the several rulings quoted earlier, the value of the loss of love and affection to the children and to the husband has also to be estimated as part of the loss of services of the deceased homemaker. (para 11)

This 1988 case lay the foundations for the recognition of homemakers' UDCW under tort law. Where her reproductive labour would have earlier been subsumed under the limited pecuniary category of "loss of consortium," attracting a fixed sum of compensation, it was now to be included under the pecuniary category of "loss of services to family" and expanded to include loss of love and affection and then multiplied for her reproductive lifespan to result in a much higher compensation. This led to a fuller appreciation of a homemaker's services to expand beyond unpaid domestic work, to include unpaid domestic *and* care work.

The next substantive leap came in 2009. In a path-breaking judgment, Justices Prabha Sridevan and T S Sivagnanam of the Madras High Court (*National Insurance Co Ltd v Minor Deepika* 2009; henceforth Minor Deepika) further deepened the conceptual foundation for the recognition of UDCW "for after all, the home is the basic unit on which our civilised society rests" (para 9). To support their position, they cited the General Recommendation 17 of the Committee on the Elimination of Discrimination Against Women (CEDAW) which requires that states should encourage and support research to evaluate the unremunerated domestic activities of women and quantify and include this in the gross national product. Justice Sridevan also used the gender-neutral term "homemaker" for the first time and offered a middle-class understanding of social reproduction, as including "managing budgets, co-ordinating activities, balancing accounts, helping children with education, managing help at home, nursing care, etc" (para 11). She elaborated on a partnership method for assessing the compensation, before calling for a more scientific way to assess the value of the unpaid homemaker both in accident claims and family law cases. This set the stage for an uptake of this decision by the Supreme Court in 2010.

The Supreme Court Judgment

In the case of *Arun Kumar Agrawal and Anr v National Insurance Company and Ors* (2010) (henceforth Agrawal), the deceased was a 39-year-old mother who took care of a minor child and "domestic affairs" and earned about ₹50,000 annually from doing handicrafts work. The Supreme Court delivered a significant judgment, citing a range of international advocacy and academic materials, to pay an ode to the altruism of Indian homemakers and why their labour must be adequately recognised and remunerated.[6] To begin with, the Supreme Court was cognisant of the fact that the homemaker did more than the market could ever recognise. Although domestic work was more easily quantifiable and indeed fungible (by hiring a domestic worker or housekeeper), the affective labours of the "housewife" performed selflessly day and night, which involved teaching and guidance for small children, were incapable of being recognised by the market. Hence, the Supreme Court also disagreed with the Delhi High Court, which had in the past used the minimum wages of a skilled worker as the base line for determining compensation due to a homemaker.

Although the claim was filed under Section 166 of the MVA where liability is based on fault, the Court adopted the Second Schedule of the MVA, 1988, particularly clause 6 of the Second Schedule which fixed a spouse's notional income at a third of her husband's income.[7] Justice Ashok Ganguly lamented the distinct gender bias, even in social welfare legislations, observing that clause 6 had no rational basis, paving the way for a possible constitutional challenge. He also castigated census authorities for listing homemakers alongside sex workers,

beggars, and prisoners, who are not considered to be productive, earning members of society, again hinting at the legal consequences for the discriminatory actions of a public authority. Fascinatingly, Justice Ganguly cited feminist economists in adopting an expansive concept of work to include subsistence agriculture and expenditure saving activity, and referred to the concept of "depletion" which feminists argue results from the non-recognition of women's reproductive labour (Rai et al 2014). He highlighted the opportunity cost of UDCW, not doing paid work in the market, as a reason for women's poverty. He also hauled up the Indian government for not satisfying its international law obligations under CEDAW and underlined the need to start using time use surveys to evaluate UDCW. Justice Ganguly ultimately called for reforming the MVA and family laws to recognise women's UDCW.

The Supreme Court's decision in Agrawal has been significant in symbolic and material terms. While there were only 60 cases dealing with homemakers under the MVA pre-2010, since 2010 alone, approximately 200 cases have dealt with homemakers with a hundred cases citing the Agrawal case. The case has been followed in motor vehicle accidents involving homemakers resulting in disability rather than death as well as non-MVA cases involving medical negligence. Its rhetoric of maternal altruism has gained popularity as judges used the cause of the labouring "housewife" to put their stamp of social justice on their decisions. To illustrate, in the 2016 case of *Oriental Insurance Co Ltd v Chanchal Khatri and Ors* (2016), the Chhattisgarh High Court noted how the mother reproduced the cultural fabric of Indian society.

> One must remember that in Indian society, a mother not only serves her children, but she is also a teacher, guide, mentor and philosopher for them. A mother inculcates good habits in her children. It is the mother who teaches her children what is good and what is bad. These are moral values which can be taught by a mother only and no one else. While assessing the contribution of a mother, the Court should not only be guided by the material aspects, but also by the nature of the duties performed by her. A mother works with selfless devotion. She has no hours of work. She can be the first person to get up in the morning in the house and can be the last person to go to sleep in the night. The contribution of a mother, in fact, can never be converted into rupees and paise. (para 26)

In 2020, Justice S M Subramaniam of the Madras High Court lauded women's role as mothers in building the nation, noting that they were "standing in a higher pedestal than that of the earning member in a family" (*Bhuvaneswari v Mani; The United India Insurance Co Ltd* 2020: para 18).

The courts continued to find clause 6 of the Second Schedule problematic. Placing women's unpaid work on par with men's paid work, Justice Kirubakaran of the Madras High Court in 2019 observed:

> It is recognised that a home maker is also equally doing household works as that of other spouse, who goes out and earns. By no stretch of imagination, the household work down (sic) by the home maker could be under estimated. (*Oriental Insurance Company Ltd v Karuppasamy and Ors* 2019: para 8)

Justice Kirubakaran further noted the growing gender equality at workplace, with women sometimes earning more than their husbands. In this new reality, it was not acceptable to peg one spouse's income to another's. He went so far as to say that if this case had been a writ petition, the court would have quashed clause 6.

Methods for valuing loss of services to family: Having recognised the value of gratuitous services rendered by the homemaker, how did courts factually value these services? In the early years when cases of homemakers' deaths came before the courts, judges used the "replacement method" to assess compensation. Later, courts looked to the "opportunity cost" of a woman's decision to work at home. They considered minimum wage tables for skilled and unskilled workers or compensation levels pegged to educational qualifications subsequently adjusted for age and depending on whether she had children or not. Meanwhile, the "partnership method," as set out in *Minor Deepika* in 2009, although less popular, viewed the marriage as an equal economic partnership so that the homemaker's salary would be half of the husband's salary.

Courts also routinely relied on the non-MVA case of *Lata Wadhwa v State of Bihar* (2001), where the Supreme Court fixed a lumpsum amount of ₹3,000 a month as the notional income for a deceased homemaker between the ages of 34–59, with a lower amount for "elderly ladies" between the ages of 62–72.[8] The ₹3,000 figure has since been increased by the courts to amounts between ₹4,000 and ₹9,000.

Yet, other courts have relied on the Second Schedule to the MVA cases. Here, the notional income for a non-earning member is set at ₹15,000 per annum. But since the schedule was not adjusted to take into account inflation, courts would increase the amount awarded under the schedule to ₹20,000 a year, alongside the other methods listed above. Ultimately, judges were opportunistic about the measure they would use, which they would enhance using their "good judgment." They also increased amounts awarded under different heads of pecuniary and non-pecuniary damages and interpreted the heads liberally, even as they reminded Parliament that the Second Schedule was introduced in 1994 but was redundant, irrational, and unworkable, and needed to be urgently amended (*Puttamma v K L Narayana Reddy* 2013; *Ram Pratap v Chandigarh Transport Undertaking* 2016).

Compensating the loss of income: As alluded to earlier, homemakers often did paid work, outside or within the home, alongside performing UDCW for their own families. However, much of this paid work was in the informal economy, where there was no clearly discernable employment relationship or proof of income. They consequently suffered an "informality penalty," since insurance companies would deny claims and courts often agreed with them, especially pre-2010. Post 2010, courts have been more willing to recognise this work in assessing compensation. Thus, in *Hasnath Yadav v Uttar Pradesh State Road Transport Corporation* (2014), the Uttar Pradesh High Court held that if there was no evidence of income and it was not controverted either, judicial notice could be taken of skills possessed. Similarly, in

Jitendra Khimshankar Trivedi v Kasam Daud Kumbhar (2015), the Supreme Court held that where the homemaker's earnings were in dispute, they would use the earnings of her sister-in-law who was doing the same work.

In determining compensation for the loss of income, courts often include the loss of future prospects in employment. The Supreme Court had held that future prospects could be included in case the deceased had a permanent job but not if they were self-employed. This affected women disproportionately as they often worked in the informal economy; future prospects were also not considered for a homemaker's UDCW at home, whereas future prospects could be considered for her replacement when she died. Further, compensation for the work of homemakers reduced with age as the courts believed that they will be performing lesser childcare as children grew up. However, the Supreme Court eventually upheld the addition of future prospects in cases where the deceased was self-employed or working in the unorganised sector (*National Insurance Co Ltd v Pranay Sethi and Ors* 2017), which was followed in a long line of cases and extended to homemakers.

This judicial recognition of UDCW and paid work outside the home in the informal economy have been further enhanced through reduced deductions for living expenses that dependents of the deceased would have incurred in maintaining her during the lifetime (*Royal Sundaram Alliance Insurance Co Ltd v Master Manmeet Singh* 2012; *Shriram General Insurance Co Ltd v Shree Krishan* 2015; *Paramjit Singh v Dilbagh Singh alias Bagga* 2013; *Dilawar Singh and Ors v Jaipal Singh and Ors* 2019; *Manjit Singh and Ors v Satish Kumar and Ors* 2017; *Parveen Kumar v Gurpreet Singh* 2017).

In addition, the courts have gone well beyond the amounts set out in the MVA to award enhanced compensation for pecuniary losses, such as loss of estate and funeral expenses, as well as non-pecuniary losses, including pain and suffering, pain and shock (*State of Assam v Urmila Datta* 1973), love and affection, loss of foetus, shock and agony, loss of expectation of life, loss of amenities of life, and loss of consortium. Thus, although the Second Schedule lists ₹5,000 as the compensation for loss of consortium, the Supreme Court has reset the amount at ₹40,000 (*National Insurance Co Ltd v Pranay Sethi and Ors* 2017), eight times that of the statutory amount. Similarly, although a claim for the loss of foetus was rejected as recently as 1995 (*Rakesh Kumar and Anr v Prem Lal and Ors* 1995), by 2013, the Madras High Court invoked Agrawal to award ₹2.5 lakh as compensation for the loss of foetus, thus, recognising the homemaker's reproductive labour in bearing a pregnancy (*Rakhi Kothari v R Soundaapandian and Anr* 2013).

Effect on Redistribution

Between 1968 and 2019, Indian courts became increasingly invested in adequately compensating homemakers for the reproductive labours that they performed at home rather than use the logic of altruism to turn "labour into love" (Silbaugh 1996). They then treated the pecuniary category of "loss of services to family" as a recurring monthly loss, just like the loss of income from any other job. In the face of a dated Second Schedule, judges were pragmatic, opportunistic, and creative in compensating the dependents of homemakers. The height of this recognition of women's UDCW was reached in 2010, when the Supreme Court paid an ode to the Indian homemaker's altruism in glowing terms. This decision was widely followed post 2010 in motor vehicle cases and beyond, with male and female judges in various high courts seeking to outdo one another in embracing a seemingly gender-friendly cause. A positive doctrinal development, thus, produced substantial material outcomes.

Yet, viewed through the lens of redistribution, the jurisprudence on UDCW offers pause. Altruism, as the basis of recognition, has its drawbacks. Feminist economists have long pointed out that India's low female LFPR can be attributed to an ideology of "gendered familialism," whereby care is considered to be a familial and female responsibility. The various judgments on valuing the unpaid domestic work of homemakers not only do not question this ideology, they, in fact, glorify it. This uncritical glorification has redistributive consequences, with courts compensating marital families for women's reproductive labours (real and anticipated) at the expense of natal families. Thus, where a single woman died in a motor vehicle accident, compensation was awarded to her parents for only five years because the court opined that she would have been most likely to be married in five years' time and would not have helped her parents (*Ramsingh v Ismail* 1997: para 14). Her reproductive labours were anticipated to contribute to a family that she would set up with her husband.

In another case (*Rani Devi and Ors v Sarbati Devi and Ors* 2017), the claims of the natal family and the marital family over a daughter-in-law's reproductive labours came to a head. The tribunal awarded compensation to the parents of the deceased homemaker, who was killed along with her newly married husband. The Punjab and Haryana High Court reversed the tribunal's decision by arguing that the tribunal had erroneously relied on decisions of the high courts of Madras, Andhra Pradesh and Kerala, all southern states which, in the court's view, had a matriarchal culture unlike the northern states where patriarchal culture prevailed. The Punjab and Haryana High Court observed that it was not unusual for a daughter-in-law to take care of her in-laws in her husband's house and that the "daughter-in-law is the carrier of family tradition to the generation next (sic); a living embodiment of sacrifice; a repository of traditional values and an amalgam of the husband's family practices with biological family's upbringing" (*United India Insurance Co Ltd v Parlad Rai & Ors* 2010: para 16). The court, thus, offered clear validation of a woman's role in sustaining the patrilineal lineage within the heteropatriarchal institution of marriage. Rather than retroactively compensate the parents of the homemaker for their reproductive labours in giving birth to and raising a daughter, the court here compensated the marital family for the future promise of their daughter-in-law's reproductive labours.

The recognition of UDCW is also inextricably linked to the status of the homemaker as mother. If she had no children

when she died, the husband was assumed to be free to remarry, which justified a deduction in the amount due to him. If she had children, whether the children were minor, or not, mattered; if they were adult earning members, increased compensation was unlikely. If the child was "invalid" (court's usage; *Umesh Kumar v Haryana State* 1993), or she had several children (*Madan Lal v Janardhan* 1996), compensation would be increased.

Furthermore, the amount of compensation was linked to the homemaker's age. Compensation was awarded for loss of services only until the age of 60 (*State of Assam v Urmila Datta* 1973) and a distinction made between younger "active" homemakers between 34 and 59 years and "elderly ladies" between the ages of 62 and 72 (*Lata Wadhwa v State of Bihar* 2001). A homemaker's contribution to the household was presumed to drop dramatically after the age of 55 when her children became adults although she may have taken some care of them or their children even after marriage, maintained a household for herself and her husband, kept up an emotional, sexual and social relationship with her husband,[9] and maintained connections in the community through attendance at births, weddings and funerals. Courts themselves acknowledged that there was no retirement age for a homemaker (*Oriental Insurance Co Ltd v Shamsher Singh* 2004; *Sunny Chugh v Darshan Lal 1985; Shakuntala Devi v Delhi Transportation* 1989). Yet, even as recently as 2015 (*Shriram General Insurance Co Ltd v Shree Krishan* 2015), Justice Gita Mittal held that compensation for gratuitous services would go up until the age of 50 and fall from the age of 55 carrying on to nil by the age of 65.

Judges have also considered the redistributive effects of the recognition of UDCW along class and educational lines. Already in the build-up to the recognition of the altruism of women's UDCW, there was a hint of class bias. In valuing UDCW, as the scope of the homemaker's reproductive labour expanded from unpaid domestic work to include unpaid care work, it was assumed that manual tasks around the house could be easily performed by a maid or housekeeper but that the crucial task of cultural reproduction through inculcation of good habits and moral values (presumably by a middle-class homemaker) would be harder for the lower-class maid to undertake.[10]

Conversely, judges also objected to the class discriminatory nature of clause 6. In a 2012 case (*Royal Sundaram Alliance Insurance Co Ltd v Master Manmeet Singh* 2012), Justice Gita Mittal of the Delhi High Court noted that pegging a homemaker's notional income to her husband's income meant that all low- and middle-income family homemakers performing similar tasks would now be compensated differently. Similarly, a homemaker from a high-income family may be contributing far less to the maintenance of the household than a lower-class homemaker but would be receiving far greater compensation. Hence, the claimants should lead evidence to prove the services rendered.[11] Despite her discomfort with clause 6, Justice Mittal opined that the base level of income for a homemaker had to be determined based on the wage level for an individual with her educational achievements; additions then had to be made according to the age of the homemaker and whether she had children or not. Thus, the multiplicand was explicitly linked to educational levels, which function as a proxy for class status.

Conclusions

In conclusion, I have sought to demonstrate that tort law can have significant distributive effects, a fact long recognised by Indian judges and lawmakers. Faced with claims by the dependents of deceased homemakers, courts drew on common law doctrine to substantively expand the category of "loss of gratuitous services to family" which allowed its multiplication for the homemaker's lifespan. They understood the term "services" broadly to cover domestic and care work. They tested varied methods to value women's UDCW by reference to the market (replacement costs, opportunity cost) or amounts fixed by judges and legislators. Wherever possible, they increased these amounts to keep pace with inflation, sought to minimise the informality penalty, reduced deductions, applied generous multipliers, and increased compensation under non-pecuniary heads. They have looked beyond tort law to constitutional law and international human rights law to support the recognition of UDCW. However, the Indian courts' recognition of women's UDCW on the basis of the ideology of altruism is undoubtedly problematic in reinforcing cultural assumptions about the desirability of motherhood within heteropatriarchal marital forms, while also producing poor intra-gender redistributive outcomes.

The interpretation of the MVA in relation to deceased homemakers is now moot given the passage of the Motor Vehicles (Amendment) Act, 2019. The MVA now requires that a mandatory amount of ₹5,00,000 be paid in the case of death on a no-fault liability basis. A flat minimum payment for every life lost, irrespective of their gender, age, occupation, or marital status is welcome. This will also reduce the substantial burdens of adjudicating compensation claims, which are currently borne by the legal system, while also reducing judicial arbitrariness. Yet, it is worth assessing the jurisprudence recognising women's UDCW, not in the least because the Supreme Court in *Kirti v Oriental Insurance Co Ltd* (2021) confirmed the "wages for housework" jurisprudence that I have outlined so far. In particular, Chief Justice N V Ramana acknowledged that fixing a notional income for the homemaker signalled that the law believed in the value of the labour, services, and sacrifices of homemakers, and that this constituted a step towards the constitutional vision of social equality and ensuring dignity of life to individuals.

One might object that compensation for UDCW does not, in fact, benefit homemakers themselves but is rather a true subsidy to capital as argued by feminists supporting the wages for housework campaign of the 1970s, in that it is awarded by courts to husbands and children rather than the women themselves. Yet, Agrawal has been used to award compensation to homemakers for permanent disablement from a motor vehicle accident. Interestingly, Agrawal has also been invoked to highlight the significance of the MVA as a social legislation to increase compensation for dependents of

a deceased man (*ICICI Lombard General Insurance Co Ltd v B G Chetan Kumar and Ors* 2018), to take judicial notice of increases to the incomes of self-employed persons in the informal economy (*Shriram General Insurance Co Ltd v Rashida Banno and Ors* 2018), and for assessing compensation for the death of a single woman (*Richa Prajapati v Kishan Kumar Nigam and Ors* 2017).

One might claim that the judicial pronouncements I detail reiterate the logic of gendered familialism, glossed over with cultural and nationalist pride, even amounting to judicially approved misogyny. However, celebrating altruism has not been at the expense of material gains, unlike other areas such as surrogacy and egg donation in the context of assisted reproductive technologies (Banerjee and Kotiswaran 2020). Indeed, when Sridevan, the pioneering feminist judge in the Minor Deepika case, was asked about her reliance on conventional stereotypes of women as caregivers and mothers, she claimed it was a strategic choice aimed at winning recognition for women's labour with an eye to the Supreme Court where she thought her decision might be challenged (Sunder Rajan 2015). Strategic essentialism is, therefore, a plausible feminist strategy, especially if this jurisprudence of UDCW can traverse legal domains. Furthermore, alongside the glorification of women's roles as mothers, some judges have spoken of an egalitarian model of companionate marriage wherein women are increasingly earning outside the home and sometimes even more than their husbands. Thus, there are some key gains in terms of recognition and redistribution here in a transformative key (Fraser 1997: 27).

As the five-decade long struggle to recognise UDCW in Indian courts shows, if courts can bend over backwards to quantify the contributions of women to their households upon death, why not do the same in normal times? The explicit normative admission by courts of women's worth on an ongoing basis can be used to direct census authorities to comprehensively and adequately assess the full range of labour performed by women, thereby revisiting the definition of the production boundary. Recollect that the African American welfare mothers in the United States demanded wages for housework, so that the state pay them for taking care of their own children rather than reroute them towards poorly paid work in the market and its attendant double burdens (*Rakesh Kumar and Anr v Prem Lal and Ors* 1995: para 7). Indian homemakers might make a similar demand at a time when the "problem" of the declining female LFPR becomes visible. Feminist lawyers can mobilise this jurisprudence to activate constitutional law provisions, such as Article 23 which prohibits unfree labour. Courts have held that where work is remunerated at a level less than the minimum wage, it would amount to forced labour. Although this understanding of forced labour has emerged in relation to paid work for the market, where economic coercion is recognised as being endemic, one could imagine compulsory heterosexual marriage (*National Insurance Co Ltd v Minor Deepika* 2009) as imposing similar levels of coercion on women to marry in order to meet their basic needs (Bhatia 2019). The UDCW jurisprudence can also be used to advocate for a matrimonial property law regime in Indian family law (Agnes 2012; Kumar 2015).

The Indian courts' recognition of women's UDCW can also feed into feminist conversations on universal redistributive measures. Kathi Weeks (2011) has argued that the wages for housework campaign of the 1970s offers provocation for a demand for a universal basic income in post-Fordist times, where the boundaries between productive and reproductive realms are more diffused than ever. Notably, the recent cash transfer in the wake of the pandemic of ₹500 for three months to poor women's Jan Dhan accounts suggests that the Indian state already recognises the central role of women in managing the social reproductive needs of their households. This was further validated by numerous political parties that promised cash transfers for UDCW in the run-up to the state assembly elections in 2021. But this recognition is hardly sufficient, given the highly lop-sided gendered distribution of UDCW evidenced by the first national time use survey wherein women spent almost five hours on unpaid domestic work while men spent one and a half hours on the same (Shaikh 2020).

Further, poor women are not the only victims of this maldistribution of UDCW. If anything, the rapid rate of job losses in the formal sector, and the extended UDCW burdens over the course of the pandemic demands a global recognition of women's UDCW premised on their labour rather than on the basis of charity or welfare. And while this risks entrenching gendered stereotypes (even inviting violence where UDCW is not performed) (Oxfam India 2020), it may offer women the economic wherewithal in the long run to exit compulsory marriage (Raveendran 2016). After all, it is only by fundamentally restructuring the institution of marriage can we hope to realise women's economic empowerment.

NOTES

1 The case law, I elaborate on, uses various terms to denote women performing UDCW, including "housewife," "householder," "homemaker," and "mother." For the sake of consistency, I use the term "homemaker."

2 Reproductive labour has been defined as "biological reproduction; unpaid production in the home (both goods and services); social provisioning (… voluntary work directed at meeting needs in the community); the reproduction of culture and ideology; and the provision of sexual, emotional and affective services (such as are required to maintain family and intimate relationships)" (Hoskyns and Rai 2007: 300).

3 The rate of marriage for women by the age of 30 in India is close to 94.8% (Raveendran 2016: 11). Divorce rates on average are quite low (2.6%). Hence, the estimate of 300 million homemakers.

4 See endnote 2. Although the wages for housework campaign is often misunderstood as having demanded wages, in reality, these feminists used the claim to put a price on the value of housework, which they argued functioned as a subsidy to capital. Putting a price on housework was a strategy to refuse it rather than valorise it. They did not want a wage from their husbands nor did they want collectivisation of domestic work (meal preparation or childcare) by the state. They wanted to do less housework not so that they could take paid work outside the home and suffer a double burden, but because they wanted more leisure time to paint or take a walk. They were, thus, against commodification by the market but also socialisation by the state.

5 In the same case, it was held that if the husband and wife were separated with no chance of reconciliation, the loss of services is not treated as a loss. If there was a reasonable

chance of reconciliation, 50% of the loss may be awarded.

6 It is worth noting that this claim was filed under Section 166 of the MVA. But because the apex court found no criteria for fixing compensation, the judges adopted the Second Schedule of the MVA, 1988.

7 Thus, being unremunerated reproductive labourers levelled the class disparity between homemakers, whether they filed claims under Section 163A or 166. This has continued to be followed, reiterated most recently in *United India Insurance Co Ltd v Jasveer Singh and Ors* (2018).

8 The counsel for the homemakers, in this case Rani Jethmalani, argued before the apex court that the initial compensation for the homemakers was totally arbitrary.

9 This is acknowledged in the case of *National Insurance Co Ltd Rep by Its Branch Manager v Mahadevan et al* on 27 April 2007.

10 The casteist implications of such hierarchisation are crucial in the Indian context although the cases do not discuss the caste identities of the parties.

11 A similar observation was made by the High Court of Punjab and Haryana in *Dilbag Singh and Ors v Respondent Vinod Kumar and Ors* (2017: para 5), where it observed that "in my considered opinion, there cannot be any straight check formula for assessing the contribution of a house wife. It all depends upon the status of the family to which (the) deceased belongs and other circumstances."

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